

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

Rentberry, Inc., and Delaney  
Wysingle,

Plaintiffs – Appellants,

v.

The City of Seattle,  
Defendant – Appellee.

Case No: 19-35308

**Supplemental Appendix**

Legislative Details, Council Bill 119507, re Ordinance 125840

Ordinance 125840

Declaration of Ethan W. Blevins

Exhibit 1

Exhibit 2

Declaration of Delaney Wysingle

Exhibit 1

Exhibit 2



# SEATTLE CITY COUNCIL

600 Fourth Ave. 2nd Floor  
Seattle, WA 98104

## Legislation Details

Date	Ver.	Action By	Action	Result
6/18/2019	1	City Clerk	attested by City Clerk	
6/18/2019	1	Mayor	returned	
6/17/2019	1	Mayor	Signed	
6/14/2019	1	City Clerk	submitted for Mayor's signature	
6/10/2019	1	City Council	passed	Pass
6/6/2019	1	Housing, Health, Energy, and Workers' Rights Committee	pass	Pass
4/29/2019	1	City Council	referred	
4/16/2019	1	Council President's Office	sent for review	
4/9/2019	1	City Clerk	sent for review	



# SEATTLE CITY COUNCIL

## Legislative Summary

CB 119507

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Record No.: CB 119507      Type: Ordinance (Ord)      Status: Passed  
Version: 1      Ord. no: Ord 125840      In Control: City Clerk  
File Created: 04/08/2019  
Final Action: 06/18/2019

**Title:** AN ORDINANCE relating to fair housing; establishing a one-year prohibition on use of rental housing bidding platforms; amending Section 7.24.020 of the Seattle Municipal Code; and adding a new Section 7.24.090 to the Seattle Municipal Code.

	<u>Date</u>
Notes:	Filed with City Clerk: 6/18/2019
	Mayor's Signature: 6/18/2019
Sponsors: Mosqueda	Vetoed by Mayor:
	Veto Overridden:
	Veto Sustained:
Attachments:	
Drafter: patrick.wigren@seattle.gov	

### Filing Requirements/Dept Action:

History of Legislative File			Legal Notice Published:	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Clerk	04/09/2019	sent for review	Council President's Office			
	Action Text:	The Council Bill (CB) was sent for review. to the Council President's Office					
	Notes:						
1	Council President's Office	04/16/2019	sent for review	Housing, Health, Energy, and Workers' Rights Committee			
	Action Text:	The Council Bill (CB) was sent for review. to the Housing, Health, Energy, and Workers' Rights Committee					
	Notes:						
1	City Council	04/29/2019	referred	Housing, Health, Energy, and Workers' Rights Committee			
	Action Text:	The Council Bill (CB) was referred. to the Housing, Health, Energy, and Workers' Rights Committee					
	Notes:						

**Legislative Summary Continued (CB 119507)**

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1 Housing, Health, Energy, 06/06/2019 pass Pass  
and Workers' Rights  
Committee  
Action Text: The Committee recommends that City Council pass the Council Bill (CB).  
In Favor: 2 Chair Mosqueda, Member Bagshaw  
Opposed: 0

1 City Council 06/10/2019 passed Pass  
Action Text: The Council Bill (CB) was passed by the following vote, and the President signed the Bill:  
In Favor: 9 Councilmember Bagshaw, Councilmember González, Council  
President Harrell, Councilmember Herbold, Councilmember Juarez,  
Councilmember Mosqueda, Councilmember O'Brien, Councilmember  
Pacheco, Councilmember Sawant  
Opposed: 0

1 City Clerk 06/14/2019 submitted for Mayor  
Mayor's signature

1 Mayor 06/17/2019 Signed  
Action Text: The Council Bill (CB) was Signed.

1 Mayor 06/18/2019 returned City Clerk

1 City Clerk 06/18/2019 attested by City Clerk  
Action Text: The Ordinance (Ord) was attested by City Clerk.

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CITY OF SEATTLE  
ORDINANCE 125840  
COUNCIL BILL 119507

AN ORDINANCE relating to fair housing; establishing a one-year prohibition on use of rental housing bidding platforms; amending Section 7.24.020 of the Seattle Municipal Code; and adding a new Section 7.24.090 to the Seattle Municipal Code.

WHEREAS, online or application-based platforms that provide landlords the ability to list rental housing units, oblige potential tenants to bid on certain lease provisions, and allow landlords their choice of tenant based on the tenant's bid and screening criteria have recently appeared in many housing markets, including Seattle's; and

WHEREAS, over the past several years, the City Council (“Council”) has passed a variety of amendments to the Seattle Municipal Code regulating rentals, revising the housing code, and updating fair housing protections, resulting in a new and different regulatory landscape; and

WHEREAS, emerging technologies have caused consumers to rapidly escalate the use of application-based and online services, and it is unclear whether the structure and operation of these new services comply with the Seattle Municipal Code; and

WHEREAS, the Council wishes to understand new technologies and innovations that may have impacts on communities throughout Seattle, prior to these new technologies and innovations becoming entrenched; and

WHEREAS, the Council wishes to know more about how these services function and the impact they may have on Seattle's rental housing market before allowing landlords and tenants to use them within Seattle; and

Asha Venkataraman  
LEG Rent Bidding Prohibition ORD  
D2b

1 WHEREAS, the Council passed Ordinance 125551 in March 2018, prohibiting landlords and  
2 potential tenants from using rental housing bidding platforms for real property located in  
3 Seattle city limits; and

4 WHEREAS, Ordinance 125551 also included a request for the Office of Housing to “conduct a  
5 study of the current or potential impacts rental housing bidding platforms have and could  
6 have on equitable access to Seattle’s rental housing market”; and

7 WHEREAS, in 2018, Rentberry, Inc. and Delaney Wysingle, an individual, sued The City of  
8 Seattle for its prohibition against landlords and potential tenants’ use of rental housing-  
9 bidding platforms, arguing that the prohibition interfered with their freedom of speech;  
10 and

11 WHEREAS, on March 15, 2019, Judge Richard A. Jones ruled in favor of The City of Seattle,  
12 stating that the use of the online rental housing bidding service Rentberry provides is  
13 conduct, not speech; NOW, THEREFORE,

14 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

15       Section 1. Findings

16       A. Seattle’s housing market has become very competitive over the past decade, causing  
17 scarcity issues for tenants.

18       B. It is uncertain whether and how these application-based and online services impact  
19 Seattle’s rental housing market, as these services may have different effects on markets  
20 depending on the scarcity of housing supply.

21       C. The benefits and drawbacks of such services to landlords and tenants have not been  
22 studied in Seattle.

D. The City of Seattle is committed to ensuring equitable access to rental housing, and platforms that require use of a computer and internet in order to access rental housing may hinder the ability for certain communities to meaningfully identify and obtain needed housing.

E. The use of new technologies and innovations can spread quickly, whether or not their impacts on communities are in line with Seattle's values of equity and work toward expanding access to rental housing.

F. Studies suggest that the auction model of rental housing-bidding works to increase rents, and rental housing-bidding software will place an additional increased upward pressure on rents.<sup>1</sup>

G. Rent increases have been shown to disproportionately impact low-income households and households of color.

H. The Office of Housing is conducting the study on rental housing-bidding and estimates it will be completed in June 2019.

Section 2. Section 7.24.020 of the Seattle Municipal Code, last amended by Ordinance 125558, is amended as follows:

## 7.24.020 Definitions

\* \* \*

“Rental agreement” means a “rental agreement” as defined and within the scope of RCW 59.18.030 and RCW 59.18.040 of the RLTA in effect at the time the rental agreement is

<sup>1</sup> Dotzour, M., Moorhead, E., & Winkler, D. (1998). The Impact of Auctions on Residential Sales Prices in New Zealand. *Journal Of Real Estate Research*, 16(1), 57-72. Retrieved from <http://aresjournals.org/doi/abs/10.5555/rees.16.1.803550373kr7t004?code=ares-site>; Lusht, K. (1996). A Comparison of Prices Brought by English Auctions and Private Negotiations. *Real Estate Economics*, 24(4), 517-530, available at <http://dx.doi.org/10.1111/1540-6229.00702>; Ashenfelter, O., & Genesove, D. (1992). Testing for Price Anomalies in Real Estate Auctions. *National Bureau Of Economic Research*, (4036), available at <http://dx.doi.org/10.3386/w4036>; Lepone, A., Frino, A., Mollica, V., & Vassallo, A. (2010). The Impact of Auctions on Residential Sales Prices: Australian Evidence. *Australasian Accounting, Business And Finance Journal*, 4(3), 3-22, available at <http://dx.doi.org/10.2139/ssrn.1665933>.

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1 executed. At the time of the passage of the ordinance codified in this chapter, the RLTA defined  
2 “rental agreement” as “all agreements which establish or modify the terms, conditions, rules,  
3 regulations, or any other provisions concerning the use and occupancy of a dwelling unit.”

4 “Rental housing bidding platform” or “platform” means a person that connects potential  
5 tenants and landlords via an application based or online platform to facilitate rental housing  
6 auctions wherein potential tenants submit competing bids on certain lease provisions including  
7 but not limited to housing costs and lease term, to landlords for approval or denial. Merely  
8 publishing a rental housing advertisement does not make a person a rental housing bidding  
9 platform. This definition shall expire on the date Section 7.24.090 expires.

10 \* \* \*

11 Section 3. A new Section 7.24.090 is added to the Seattle Municipal Code as follows:

12 **7.24.090 Use of online or application based rental housing bidding services prohibited**

13 A. Landlords and potential tenants are prohibited from using rental housing bidding  
14 platforms for real property located in Seattle city limits.

15 B. This Section 7.24.090 shall expire one year after the effective date of the ordinance  
16 introduced as Council Bill 119507 unless the City Council exercises its authority under  
17 subsection 7.24.090.C, in which case it shall expire at the end of the extension.

18 C. The City Council has the authority to extend the prohibition in subsection 7.24.090.A  
19 by up to 12 months if the Office of Housing requests more time to complete the study of rental  
20 housing impacts, or if the Council needs more time to review the study or discuss potential  
21 action.

22 Section 4. The provisions of this ordinance are declared to be separate and severable. If  
23 any clause, sentence, paragraph, subdivision, section, subsection or portion of this ordinance, or

1 the application thereof to any person or circumstance, is held to be invalid, it shall not affect the  
2 validity of the remainder of this ordinance, or the validity of its application to other persons or  
3 circumstances.

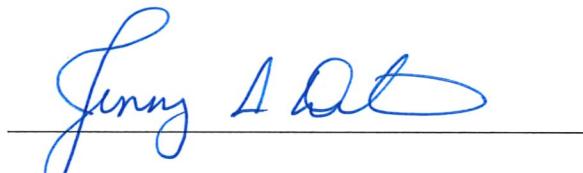
1                   Section 5. This ordinance shall take effect and be in force 30 days after its approval by  
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it  
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4                   Passed by the City Council the 10<sup>th</sup> day of June, 2019,  
5 and signed by me in open session in authentication of its passage this 10<sup>th</sup> day of  
6 June, 2019.

7                   

8                   President \_\_\_\_\_ of the City Council

9                   Approved by me this 17<sup>th</sup> day of June, 2019.

10                   

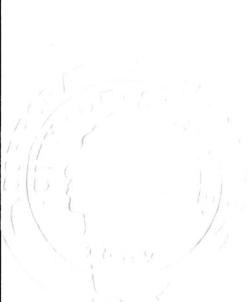
11                   Jenny A. Durkan, Mayor

12                   Filed by me this 18<sup>th</sup> day of June, 2019.

13                   

14                   Monica Martinez Simmons, City Clerk

15                   (Seal)



**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

Rentberry, Inc., and Delaney  
Wysingle,

Plaintiffs – Appellants,

v.

The City of Seattle,

Defendant – Appellee.

Case No: 19-35308

**Declaration of Ethan W. Blevins  
in Support of Motion to Supplement the Record**

I, Ethan W. Blevins, declare as follows:

1. I'm over 18 years old and of sound mind. As lead counsel for the Plaintiffs in this action, *Rentberry v. City of Seattle*, Case No. 19-35308, I have personal knowledge of the facts stated below.
2. Attached as Exhibit 1 is a true and accurate copy of the report issued by the City of Seattle's Office of Housing regarding the impact and legality of rental bidding platforms.
3. Plaintiffs received this report Erica Franklin, the city attorney assigned to this matter, via email, attached as Exhibit 2.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED this 16th day of August, 2019.

s/ ETHAN W. BLEVINS  
Ethan W. Blevins  
Pacific Legal Foundation  
255 South King Street, Suite 800  
Seattle, Washington 98104  
Telephone: (425) 576-0484  
E-mail: EBlevins@pacificlegal.org

*Attorney for Plaintiffs – Appellants*

## Exhibit 1

Motion to Supplement Record/ Decl. of Blevins  
Seattle Ofc. of Hous. Rent Bidding Study

Court: Ninth Circuit      Case No. 19-35308

Pacific Legal Foundation  
255 South King Street, Suite 800  
Seattle, WA 98104 - 425.576.0484

# Rent Bidding Study

**Date:** July 3, 2019

**To:** Seattle City Council, Housing, Health, Energy & Workers' Rights Committee, Chair Mosqueda

**From:** Emily Alvarado and Bin Jung, Office of Housing

## OVERVIEW

Seattle Ordinance 125551 established a one-year moratorium on rental housing rent bidding platforms and directed the Seattle Office of Housing (OH) to study the potential impacts of rent bidding platforms on Seattle's housing market. The ordinance was passed after online and mobile application-based rental bidding platforms, Rentberry and Biddwell, entered the Seattle housing market in 2017. Rentberry was quickly criticized by the Associated Students of the University of Washington Student Senate (ASUW). ASUW brought up the issue with City of Seattle Councilmembers, after which City Council decided to move forward with a moratorium on rental bidding platforms. The Seattle City Council instituted Ordinance 125551 in April 2018.

The brief duration of rental bidding platforms operating in Seattle prevented local data collection. As a result, the effect of rental bidding platforms on the Seattle rental housing market and on equitable access to housing cannot be analyzed. Rental bidding platforms have been in operation in other cities, which provides insight into how the City of Seattle could proceed. However, rental bidding platforms have been largely unpopular amongst renters and municipalities, and their establishment in cities is questionable. This study provides relevant information from other cities regarding rental bidding platforms where available, and identifies how the platforms could pose potential violations of City, State, and Federal laws and regulations if allowed to operate in Seattle.

The report details:

- Background information
- Issues and potential violations
- Topics for further analysis

## BACKGROUND

Rental bidding is a practice where prospective tenants compete for a rental unit by negotiating with the landlord on the amount of rent charged. Rental bidding has become more common over the past decade due to high demand for rental housing and the scarcity of rental housing, specifically at lower-income ranges. Rental bidding platforms institutionalize the practice of rent bidding by creating an online auction marketplace for rental housing. Multiple sources have likened rental bidding platforms to "eBay for housing."

However, in the past few weeks, some rental bidding platforms have transitioned to focus more on advertising rental properties than on rental bidding. Previous conversations with trade organizations

representing landlords had revealed that using rental bidding platforms as an additional advertising opportunity would be of interest to landlords, specifically smaller landlords who conduct their own advertising. A recent review showed a large percentage of listings posted on rental bidding platform websites were advertisements for properties listed on StreetEasy, Zillow, Craigslist, and realtor.com. Few listings were exclusive to the rental bidding platform, questioning if rental bidding would actually occur for the property. As rental bidding platforms continue to evolve, fewer challenges could be posed leading to less need to take further analysis or additional action.

The design of rental bidding platforms varies. In general, landlords list available properties on the platform and set an initial asking monthly rent. Prospective tenants create user profiles, which can include information such as names, photographs, credit scores, background checks, personal references, work history, previous residences, and links to social media accounts. After finding a rental unit to their liking, prospective tenants offer a monthly rent bid to the landlord for their consideration. Bids are allowed to be submitted for a period of time, after which landlords select a tenant based on their monthly rent bid and additional screening criteria.

The design of some rental bidding platforms allows prospective renters to see the number of bids placed and the current highest bid. Other platforms do not provide that information, and bidders provide a closed bid without knowledge of the current highest bid amount. After the landlord selects the winning bid, the landlord-tenant relationship and screening process move offline. However, some rental bidding platforms have incorporated automated landlord services such as background checks, lease signings, rent collection, and maintenance requests into their operations, and encourage landlords and tenants to conduct all business through their app.

The objective of rental bidding platforms is to create an online marketplace that connects landlords and prospective tenants, and provides an opportunity to negotiate rents. Rent bidding platforms often profit by receiving a commission for successful lease signings. In the case of Rentberry, if the landlord selects an offer with a monthly rent greater than their initial listed price, Rentberry receives an additional monthly payment of 25% of the difference.<sup>1</sup>

Rent bidding platforms became active in the San Francisco Bay Area and major Australian cities in 2017, and were universally met with critique from tenant organizations and the media. Commentary from the San Francisco Rent Board, Australian tenant unions, and various media outlets underscored the potential for rental bidding platforms to exploit scarce rental markets, exacerbate housing affordability crises in their respective cities, and discriminate against low-income households and populations vulnerable to displacement.<sup>2</sup>

In response, rent bidding platforms asserted the technology could provide an opportunity to reset a housing market with inflated rents. These claims are unable to be validated, partially due to the fact that

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<sup>1</sup> Moffitt, 2016

<sup>2</sup> Jacobs, 2019

rental bidding platforms were originally released exclusively in cities experiencing housing affordability crises and tight rental markets. Although rental bidding platforms have since expanded to other cities, any effect that rental bidding platforms have on weak or strong housing markets is difficult to disaggregate and attribute directly to rental bidding platforms. Currently, Seattle is also in a severe affordable housing crisis where the demand for rental housing, specifically affordable rental housing for low-income households, outstrips the supply. As a result, an analysis of the effect of rental bidding platforms in a weak Seattle market cannot be conducted until a surplus of affordable housing stock at all income levels is reached.

In Seattle, the ASUW called on the City of Seattle to ban rental bidding platforms after the app Rentberry was released in 2017 and rental housing in the University District began to appear on the app. The ASUW statement noted existing high rents, the cost of housing as a significant part of the cost of education, and Seattle's standing as one of the most competitive housing markets in the United States. ASUW also referenced Rentberry's initial marketing to landlords that claimed that apartment rents would rise an average of 5% when listed on their app, and also noted that Rentberry changed this claim in response to public backlash.

ASUW brought up the issue of rental bidding with City of Seattle Councilmembers, and in March 2018, the City of Seattle approved Ordinance 125551. The Ordinance established a one-year prohibition on the use of rental bidding platforms and requested a study from the Seattle Office of Housing on rental bidding platforms. Rentberry, Inc. and Delaney Wysingle, an individual that owned a rental property in Seattle, then sued the City over the prohibition. Rentberry and Wysingle claimed that the ordinance violated their right to free speech under the First and Fourteenth Amendments. In March 2019, District Court Judge Richard A. Jones ruled in favor of the City of Seattle, concluding that the use of rental bidding platforms was a form of conduct, not speech. The Plaintiffs have appealed to the Ninth Circuit Court, and the appeal is currently pending.

## **ISSUES AND POTENTIAL VIOLATIONS**

Ordinance 125551 detailed multiple concerns regarding rental bidding platforms, including:

- Compliance with federal fair housing protections, state rental housing regulations, and Seattle Municipal Code (SMC)
- Equitable access to rental housing
- The effect of rental bidding on the housing market depending on the scarcity of housing supply
- A lack of information regarding benefits and drawbacks to landlords and tenants

The issues and potential violations posed by rental bidding platforms as they relate to these concerns are presented below. Although focused on local implications, this section includes information and insight from other cities with rental bidding platforms in operation. In particular, the experience of the city of Melbourne, Australia provides an interesting case study.

### ***Compliance with fair housing protections – Housing discrimination against protected classes***

Discrimination in housing is prohibited at the federal, state, and local levels. Laws and regulations at the state and city levels broaden the number of communities protected against housing discrimination. Rental bidding platforms could potentially violate anti-discrimination law if their design and operations do not comply with federal, state, and city regulations. Discrimination and implicit bias in housing is widely known and well-studied. Research on discrimination in online housing rental services is also growing, providing a foundation by which to understand the implications of rental bidding platforms.

The Fair Housing Act of 1968 prohibits discrimination in housing based on the basis of race, color, religion, sex, disability, familial status, or national origin. The Fair Housing Act was intended to supplement the Civil Rights Act of 1964, and marked the creation of federal enforcement provisions against discrimination in housing. In Washington State, it is illegal to discriminate against prospective and current tenants on the basis of sexual orientation, gender identity, and veteran/military status. Furthermore, within the city limits of Seattle, it is illegal to discriminate based on political ideology, use of a trained guide dog, or use of a Housing Choice (Section 8) Voucher. These additional protections were added by the city and state to address systematic harm and move towards more fair and equitable access to housing.

The design and interface of some rental bidding platforms mimic other housing rental apps, such as Airbnb and HomeAway, that have been criticized for allowing racial discrimination to occur on their platforms. A solid body of academic research, articles, social media testimonials, and anecdotal evidence on racial discrimination witnessed on Airbnb exists, and can inform best practices for other online housing rental apps.

Airbnb is a cornerstone of the sharing economy, and positions itself as a platform that connects people who have particular goods, in this case, housing, with those who wish to obtain them. Airbnb requires users to create profiles with real names and pictures to create this community of people and facilitate a sense of trust and sharing amongst them. However, prospective guests who were Black, had disabilities, or were transgender have repeatedly been refused lodging on Airbnb in multiple cities nationwide and around the world.<sup>3</sup> The major criticism is that the use of real names and photos in user profiles triggers racial profiling and discrimination. All of these prospective guests listed are members of protected classes in the city of Seattle, and it would be illegal to discriminate against them.

A 2016 study found that guests with distinctively Black names were 16% less likely to be accepted relative to identical guests with distinctively White names. The study conducted a field experiment where messages were sent to 6,400 listings on Airbnb across five cities. Messages sent by accounts with distinctively Black names received a positive response 42% of the time, compared to 50% of the time for accounts with distinctively White names. An additional analysis found that discrimination against accounts with distinctively Black names was limited to hosts who had never previously had a Black

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<sup>3</sup> Glusac, 2016

guest, suggesting that the host's behavior is consistent with broader underlying pattern of discrimination.<sup>4</sup>

Federal and state government audits testing for racial discrimination since the Fair Housing Act was passed has shown an overall decrease in face-to-face discrimination in regulated offline, in-person housing markets. This is not to imply that discrimination does not exist. The Seattle Office of Civil Rights (OCR) has tested for, and found, discrimination against protected classes in the Seattle housing market. Offline housing markets can be audited and tested for housing discrimination, whereas testing for discrimination in online platforms is still a relatively new, but critical, monitoring practice.

Furthermore, the anonymity of online markets in conjunction with key product design choices could work to discourage discrimination in housing rental platforms. For example, eBay uses online user handles rather than real names. These online user handles can offer fewer indicators of race or ethnicity, whereas platforms that make race, sex, disability, and other protected class characteristics visible may trigger explicit/implicit bias and discrimination.

#### ***Compliance with fair housing protections – Subsidy discrimination***

Rental bidding platforms may be incompatible or inherently problematic with housing subsidy programs if the auction process consistently raises rents beyond voucher holders' ability to pay, regardless of the affordability of the initial asking rent. Housing Choice Voucher (HCV) holders may be rendered uncompetitive in rental bidding platforms, which could be discriminatory, violate fair housing law, and impede equitable access to housing if available housing is listed exclusively on these platforms.

As stated, the Revised Code of Washington prohibits discrimination of a prospective tenant based on source of income. Source of income refers to benefit or subsidy programs, such as housing and public assistance programs, veteran's benefits, social security, or other supplemental security income. Housing Choice Vouchers, previously called Section 8 vouchers, are classified as a source of income.

Furthermore, in 2016, the City of Seattle passed alternative source of income protections, which expanded fair housing protections for renters who use alternative sources of income and subsidies to pay for housing costs. This expanded the applicable subsidy programs to include short- or long-term subsidy offered by a government programs, private nonprofits, or any other assistance program that pays a tenant's rent through a direct arrangement between the program and the property owner.

The Housing Choice Voucher (HCV) program is a housing subsidy program administered by the Seattle Housing Authority (SHA). The program assists low-income families, individuals, seniors, and people with disabilities in finding housing in the private market. A monthly maximum rent amount is calculated for households participating in the program; households pay typically 30-40% of their monthly income towards the maximum rent, and the HCV pays the remaining portion. HCV holders must find housing with a rent that is either at, or below, the maximum amount listed on their voucher.

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<sup>4</sup> Edelman, Luca, & Svirsky, 2016

Use of a HCV requires coordination between the voucher holder, SHA, and the landlord of the rentable unit. After a voucher-holding household finds a suitable unit, the landlord of the unit must complete and return an SHA Leasing Kit for approval. SHA must determine the rent to be reasonable for the HCV holder and the neighborhood before approval. If there is a question about the rent, SHA may engage in a negotiation process with the landlord to set an affordable and reasonable rent. SHA then conducts a Housing Quality Standards (HQS) inspection of the unit to ensure it is decent, safe, and sanitary. If the unit does not pass inspection, the landlord is required to make repairs before a tenant move-in. The final lease is not signed until the Leasing Kit is received, the rent is approved, and a HQS inspection is completed. All three parties, tenant, HCV, and landlord will need to sign an agreement.

The average time for a HCV household to move into an apartment is approximately two weeks, but that is subject to change. Variables such as return of the Leasing Kit, rent negotiation, and HQS inspection could extend the time it takes for a lease to be signed and a tenant to move in. There is no commitment between the landlord and tenant, and either party can cancel the process until a lease is signed.

The necessity for time and coordination has been challenging for some HCV holders in their housing search. Most large property management companies utilize a dynamic pricing algorithm that relies on time-based pricing reflecting market supply and demand to set rents for their available units. Rents are subject to change throughout the month. HCV holders are unable to confirm their eligibility to move into a unit until the Leasing Kit is completed and approved by SHA and the unit passes SHA inspection. The rent amount is set when a HCV holder applies for an apartment and provides the landlord with a Leasing Kit. However, the time between the offer of a Leasing Kit and actual move-in is subject to coordination and approval by SHA. This may require a resetting of rent by the property management company as dictated by their pricing algorithm, which could restart the process or price out the tenant from the available unit.

On rental bidding platforms, landlords select a tenant based on their rent offer and additional screening criteria. Although rental bidding platforms advocate that a landlord can conduct a holistic evaluation of the tenant, a rent auction could cause a landlord to judge higher rent offers with more weight than other screening criteria. HCV households are at a disadvantage in rent auctions due to their rent and income limits and although HCV holders are protected under multiple levels of the law, rental bidding platforms have yet to implement design interventions that prevent source of income discrimination. Low-income households at large are also implicated, echoing the major critique that higher-income households will have a competitive edge in rent auctions and that disadvantaged populations will be further isolated from housing opportunities.

#### ***Lack of information on effect to Seattle's housing market and to tenants and landlords***

Rental bidding platforms are a relatively nascent technology that appeared in select major cities in 2017. The brief duration of rental bidding platforms in Seattle prevented local data collection, and data on rental bidding platforms from other cities is also minimal. Rental bidding platforms appear to be utilized for their advertising capacity, but there is lack of information tracking the effect of rental bidding platforms on successful lease signings or the demographics of renters who secure housing on the

platforms. To OH's knowledge, no studies or audits have been conducted to collect data on these platforms. The difficulty in disaggregating the effect rental bidding platforms have on the housing market from other market factors also contributes to the lack of information on the technology. Any study on the effect of rental bidding platforms on a housing market would require a rigorous methodology in order to draw significant and sound conclusions.

Before the app Rentberry's release in San Francisco, the company conducted a test to see what the effect of the app would be on landlords in the San Francisco/San Jose area. Rentberry concluded that landlords would be able to see a 5% increase on rents when using its rental bidding app.<sup>5</sup> The sample size was ten landlords and Rentberry did not divulge its analysis, and so the results of the test should be viewed in isolation. After immediate negative press on the app's ability to increase rents, Rentberry soon after stated that rents for housing units listed on its app had decreased by 5% within 10 test cities.<sup>6</sup> No subsequent data has been released by Rentberry or any other app to demonstrate that rental bidding platforms result in lower rents, particularly in strong rental markets.

Seattle has an extremely competitive housing market with a scarcity of affordable housing stock for low-income households and populations vulnerable to displacement. More information about rental bidding platforms and their effect on the local housing market, landlords, and tenants will not be available unless rental bidding platforms are reinstated. However, clear concerns exist on how rental bidding platforms' design and operation could violate federal, state, and local law, and negatively affect low-income households and protected classes. These protections and issues are not unique to Seattle, and rental bidding platforms have also not demonstrated compliance with regulation and accessibility requirements in other cities.

#### ***Equitable access – Digital inequality***

The design and interface of rental bidding platforms presents more issues regarding accessibility and equitable access to housing opportunities. Digital inequality is an established concern for those with limited internet access, English language learners, and populations with disabilities. New technologies offer opportunities to engage a broader and more diverse population than the traditional formats of posters, newspapers/television, phone calls, mailings, and in-person announcements/conversations alone. However, new technologies can be exclusionary if their design and interface do not consider and amend design for disadvantaged populations. In addition, equitable access is also questioned if housing opportunities are listed exclusively on rental bidding platforms.

Multiple factors contribute to digital inequality including device and internet access, skill level and technological literacy, and support/technical assistance. Rental bidding platforms require a computer or smartphone with internet access to view the rental housing opportunities listed. Low-income households have lower rates of in-home broadband internet connectivity compared to higher-income households, and are more likely to depend on smartphones rather than computers to have internet

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<sup>5</sup> Kendall, 2017

<sup>6</sup> Mims, 2017

access at home.<sup>7</sup> Computer access maybe limited to shared machines in public spaces such as libraries, which present additional obstacles of time, availability, and age of technology. Smartphones may be ubiquitous, but internet speed and data packages can be costly and be an additional barrier to access.

Furthermore, smartphones are only as valuable as one's ability to utilize them. Technological literacy and skill levels with new technologies vary among English language learners, seniors, and populations with disabilities. Moreover, new technologies may also not always be available in formats or languages that are compatible to population needs, forcing people to seek out support or technical assistance in order to utilize the app. Rent auctions through an app are a time-sensitive process that requires consistent engagement with the technology.

#### **CASE STUDY: MELBOURNE, AUSTRALIA**

The City of Melbourne's experience with rental bidding platforms provides an interesting example by which to understand the entry of a technology into a contested environment and its ultimate resolution. Rental bidding platforms, including Rentberry, entered the Melbourne housing market in 2017. The City of Melbourne, located in the state of Victoria, had been experiencing massive population growth in the past years that outpaced the production of housing, leading to an affordability crisis. The pressure of the crisis was felt throughout the city. Media reports and articles reflected broad concern regarding the rapid increase of rents in rental housing, the decrease in homeownership opportunities, and the gentrification of neighborhoods. The City's comprehensive plan charted the goal to accommodate and house over 1.6 million new residents in the next 35 years and highlighted initiatives to increase density and create more affordable housing.<sup>8</sup>

Similar to other cities, rental bidding platforms faced immediate criticism in Melbourne and other Australian states from residents, tenant unions, and media outlets. Tenants Union of Victoria, a governmental organization that promotes and protects rights of tenants and residents in the state, fiercely opposed Rentberry and the practice of rent bidding. Although Rentberry marketed itself to bring transparency to an opaque landlord-tenant rent negotiation, Tenants Union of Victoria stated rental bidding platforms aggravated a lack of transparency around rental prices in housing, and placed lower-income populations competed with higher-income populations in a bidding competition.<sup>9</sup>

Housing issues and concerns are addressed by the Consumer Affairs unit in the state of Victoria. In 2016, Consumer Affairs Victoria commissioned a report on rental experiences for tenants, landlords, and property managers in the state. The report surveyed 1,836 tenants in Melbourne, and found that up to 20% of prospective tenants had offered to pay more than the listed renting price to give themselves a competitive edge over other applicants. In most cases, the prospective tenant offered a higher rent, but nearly a quarter of tenants reported that a higher rent amount was suggested to them by the real estate agent or landlord. The report also found that the practice of offering higher monthly rents became more

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<sup>7</sup> U.S. Department of Housing and Urban Development, 2016

<sup>8</sup> Victoria State Government, 2016

<sup>9</sup> Robb & Zhou, 2017

common with higher income populations, with 50% of those in the middle to highest quintiles of income offering to pay more than the listed rent.<sup>10</sup>

This study affirms that higher income households are able to be more competitive in rent auctions than low-income households by the sheer nature of being able to offer more rent. Although offering more rent was not illegal in Victoria, concerns were raised regarding the prevalence of the practice and its effect on low-income households in securing housing. As housing issues fell within the purview of consumer affairs, Consumer Affairs Victoria concluded that advertising a property at a price lower than what a landlord was willing to accept could have been deemed 'false and misleading conduct,' which was a violation of law.<sup>11</sup> Therefore, rental bidding and rental bidding platforms posed to be a potential mechanism for false and misleading conduct by allowing landlords to list monthly rents they knew were not genuine asking amounts. In September 2018, the Victorian Government passed the Residential Tenancies Amendment Bill, which included a reform that prohibited rental auctions and required fixed rent amounts in advertisements for available housing units.<sup>12</sup>

There are clear differences in how the City of Melbourne and the City of Seattle address housing issues. Contrary to the state of Victoria, Australia, landlord-tenant issues in Washington State are generally regulated under the Residential-Landlord Tenant Act rather than the Consumer Protection Act. However, the example of Melbourne surfaces the question of whether rental bidding platforms comply with the wide range of state law.

## **RECOMMENDATIONS AND FURTHER ANALYSIS**

Seattle's housing affordability crisis is a critical issue for the City and its citizens. Recent revisions to the housing code and updates to fair housing protections expand equitable access to rental housing, and demonstrate the City's commitment to equity. The following topics should be investigated if rental bidding platforms are to be allowed to operate in Seattle.

### ***First-in-Time case***

In 2016, the City of Seattle passed First-in-Time legislation, which required landlords advertising rental housing to offer tenancy to the first qualified applicant that met the established screening criteria. The objective of First-in-Time was to combat implicit bias resulting in housing discrimination. First-in-Time was overturned in 2018, and the City of Seattle successfully sought direct review by the Washington State Supreme Court. The outcome of this case may affect rental bidding platforms, in that rental bidding platforms would violate First-in-Time if it were to be restored. The Supreme Court heard oral argument on that matter on June 11, 2019. The timeline following the oral argument is to be determined as decisions typically require a few months, although they could take longer.

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<sup>10</sup> Ernst & Young, 2016

<sup>11</sup> State Government of Victoria, 2016

<sup>12</sup> Parliament of Victoria, 2018

***Further analysis on the effect on landlords and tenants***

As stated previously, there is little data on the effect of rent bidding platforms in Seattle, given the limited time period they were in operation locally. Conversations with representatives from trade organizations representing Washington State landlords provided limited information on the effect of rental bidding platforms on membership operations. A representative of the Washington Multi-Family Housing Association (WMFHA), a professional trade organization that represents larger multi-family properties, stated that the organization's constituency did not use rental bidding platforms when they existed in Seattle (B. Waller, personal communication, April 22, 2019). WMFHA's constituency would also most likely not be interested in the service due to the large size of the buildings and the prevalent use of dynamic pricing algorithms to set rents. A representative from the Rental Housing Association of Washington, which represents small rental property owners and managers, remarked that the majority of their membership also did not use rental bidding platforms in advance of the moratorium, although a percentage may be interested in trying the platforms in the future if they were to be reinstated, if only for the advertising opportunity (S. Martin and H. Pierce, personal communication, April 25, 2019).

Regarding the effect of rental bidding platforms on renters, future analysis could include which populations or demographics more frequently achieve winning bids in comparison to the demographics of all bidders. An online audit could also be done to evaluate housing discrimination and implicit bias on rental bidding platforms. The experience of Housing Choice Voucher (HCV) holders should be researched further to better understand if HCV holders are consistently rendered uncompetitive, or otherwise discouraged or prevented from using rent bidding platforms. Additional research on the geographic location of properties utilizing rental bidding platforms could also provide information on the effect of these platforms in different local markets, and the extent to which they can intensify real estate pressures in a neighborhood.

***Other Washington State law violations***

The compliance of rental bidding platforms with all provisions of the Residential-Landlord Tenant Act is to be determined, as is their compliance with all other Washington State laws. For example, Washington State requires real estate brokers to be licensed and regulated, and, in general, leasing property in exchange for compensation is something that requires a broker's license. Whether rental bidding platforms may need to be comply with real estate broker requirements due to their operations should be determined. Finally, auctioneers are also required to be licensed in Washington State, and it is not clear whether a rent bidding auction may require an auctioneer license.

***Rent control***

The imposition of controls on rent or the regulation of rent in residential rental buildings that are not low-income housing is prohibited by RCW 35.21.830. The prohibition of rental bidding platforms may be in violation of this regulation if interpreted to be a control on how much rent private persons can charge for rental properties.

#### ***Additional services – Security deposits and background checks***

Some rental bidding platforms extend their scope to include automated landlord services such as security deposit and rent collection, and maintenance requests. For example, Rentberry allows prospective renters to bid on security deposit amounts in addition to the monthly rent. This could be a potential violation of City of Seattle Ordinance 125222, which limits the security deposit and non-refundable move-in fees amount to the amount of the first full month's rent.

In Washington State, landlords must also notify prospective tenants by writing, or posting, what types of information will be accessed in the tenant screening, and what criteria may result in denial of the application prior to obtaining any information about a prospective tenant. This could pose a potential issue for rental bidding platforms that incorporate automated landlord services into their products. Currently, two major rental bidding platforms, Rentberry and Bidwell, include automated landlord services in their operations. Automated landlord service applications can also provide background checks using a third-party provider.

In 2017, the City of Seattle passed Fair Chance Housing legislation, which prohibits landlords from committing unfair practices against renters based on arrest or conviction records, or criminal history. If rental bidding platforms were to be reinstated in the City, then all of their services would need to comply with this code and regulation. Landlords are prohibited from inquiring about criminal history, performing criminal history background checks, requiring disclosure about criminal history, or rejecting an applicant, or taking an adverse action based on a prospective tenant's criminal history. Landlords are also required to provide Fair Chance Housing language on all applications for rental properties, including online applications. A lawsuit has been brought against City of Seattle regarding Fair Chance Housing, but the Office for Civil Rights (OCR) has full authority to enforce the ordinance while litigation is pending.

#### ***Recommendations***

The Office of Housing offers options for consideration but does not recommend either the reinstatement or prohibition of rental bidding platforms, namely due to the pending First-in-Time appeal and that decision's direct consequence on rental bidding platforms. However, reasonable conclusions can be made on rental bidding platforms based on their design and potential violations to federal, state, and local law and regulation. Notwithstanding a firm recommendation, rental bidding platforms should show evidence of compliance and consideration with law and regulation before reinstatement in the City of Seattle. Specifically, rental bidding platforms should demonstrate how operations would comply with federal fair housing laws, Housing Choice Voucher (HCV) accessibility, and anti-housing discrimination regulation.

In order to ensure compliance and encourage equitable access to all populations, the following recommendations are offered for consideration:

- SMC 7.24.090 – Use of online or application based rental housing bidding services prohibited

- Modify to be effective in perpetuity, or until rental bidding platforms can affirmatively demonstrate compliance with all federal, state and local laws, and fair and equitable operations
- SMC 14.08 – Unfair Housing Practices
  - Include requirements for rental bidding platforms to ensure compliance and equitable access such as:
    - HCV accessibility
    - Anonymous profiles
    - Accessible formats for people with disabilities
    - Multiple language support
    - Listed screening criteria
- SMC 14.08.015 – Seattle Open Housing Poster
  - Require Seattle Open Housing Poster on all rental bidding platforms
- Modify rental bidding platforms operations to allow HCV holders to be competitive in the rent auction process

## REFERENCES

Controls on rent for residential structures—Prohibited—Exceptions. (RCW 35.21.830)

Edelman, B., Luca, M., & Svirsky, D. (2016). Racial Discrimination in the Sharing Economy: Evidence from a Field Experiment. *Harvard Business School, Working Paper 16-069*

Ernst & Young, Australia. (2016). *Consumer Affairs Victoria: Rental experiences of tenants, landlords, property managers, and parks residents in Victoria* (EY Sweeney Ref No. 25463 and 25464). Retrieved from [https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/5814/8781/7797/Victorian\\_Renting\\_Research\\_Report\\_-\\_RTA\\_Review\\_1.pdf](https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/5814/8781/7797/Victorian_Renting_Research_Report_-_RTA_Review_1.pdf)

Fair Housing Act of 1969, 42 U.S. Code § 3601-3619 and 3631

Glusac, E. (2016, June 21). *As Airbnb grows, so do claims of discrimination*. Retrieved from: <https://www.nytimes.com/2016/06/26/travel/airbnb-discrimination-lawsuit.html>

Jacobs, L. (Producer). (2019, March 25). Techlash City [Audio podcast]. Retrieved from <https://www.citylab.com/solutions/2019/02/podcast-technopolis/583096/>

Mims, C. (2017, April 2). *Want that apartment? You may have to bid for it*. Retrieved from <https://www.wsj.com/articles/want-that-apartment-you-may-have-to-bid-for-it-1491134407>

Moffitt, M. (2016, May 16). *SF startup lets would-be tenants bid for apartments*. Retrieved from <https://www.sfgate.com/technology/article/SF-startup-seeks-to-auction-off-rental-apartments-7467415.php>

Residential Tenancies Amendment Bill: Parliament of Victoria (2018)

Screening of prospective tenants—Notice to prospective tenant—Costs—Adverse action notice—Violation. (RCW 59.18.257)

Seattle, Washington, Ordinance 125222 (2016)

Seattle, Washington, Ordinance 125393 (2017)

Seattle, Washington, Ordinance 12555 (2018)

Source of income—Landlords prohibited from certain acts—Violation—Penalties. (RCW 59.18.255)

Robb, K. & Zhou, C. (2017, April 1). *Controversial US 'rent-bidding' start-up Rentberry to launch in Australia, tenant unions slam the idea*. Retrieved from <https://www.domain.com.au/news/controversial-us-rentbidding-startup-rentberry-to-launch-in-australia-tenant-unions-slam-the-idea-20170401-gvbgtn/>

State Government of Victoria. (2016). *Issues Paper – Rent, bonds and other charges: Residential Tenancies Act Review*. Retrieved from <https://s3.ap-southeast->

2.amazonaws.com/hdp.au.prod.app.vic-engage.files/9614/8816/5263/RTA\_Review\_-  
\_Issues\_paper\_-\_Rent\_bonds\_and\_other\_charges.pdf

U.S. Department of Housing and Urban Development. (2016). Digital Inequality and Low-Income Households. Retrieved from  
<https://www.huduser.gov/portal/periodicals/em/fall16/highlight2.html#title>

Victoria State Government. (2016). *Plan Melbourne*. Retrieved from <https://www.planmelbourne.vic.gov>

## APPENDIX

*In recent weeks, some rental bidding platforms, have transitioned to focus on advertising.*

**2 Beds Apartment**

2 Bed 1 Bath No pets Allowed

Monthly Price  
\$1,200

Apply

### Apartment Description

(651) 408-2790 - (RLNE3321546) 2 Bed Unit close to Whole Foods and Selby/Snelling. - Please note this unit is on street parking only.2 Bedroomed unit with hardwood floors, fresh paint and updated kitchen and bathroom. Beautiful building sits just a block away from the brand new Whole Foods at Selby and Snelling. Living and dining room are complete with original woodwork features and built in. The ... [Full description](#)

Saint Paul, MN

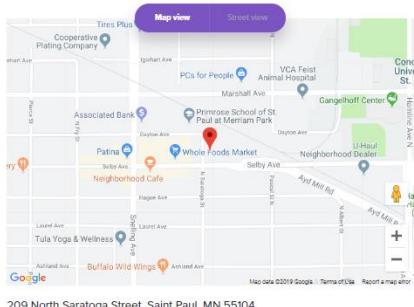
Click to expand photos

2 1 900 Cats

Map 2 beds 1 bath 900 sq ft OK

Commute Time 184 Saratoga Avenue N 184 Saratoga Ave N, Saint Paul, MN 55104

\$1,200 /mo



*Screenshot of Rentberry listing, 07/03/19*

*Original listing on realtor.com*

**Looking For Roommate. Private Bath**

1 Bed 1 Bath No pets Allowed

Monthly Price \$850

Apply

12 days ago

**Room Description**

Offering a room for rent with a private bath. 2Bed/2Baths. Great location! Very close to downtown, restaurants and stores. Free parking.

Show 1 more

Roomster Windows download free app ★★★★★

E Riverside Dr, Austin, TX, USA

12 days ago

**\$800 USD per month**

12 days ago

**EAST Riverside Private Bedroom/Bath Private Room** offered by Alex

Location

East Riverside Drive, Austin, TX, United States

Minimum Stay 6 months

Available Date Immediately

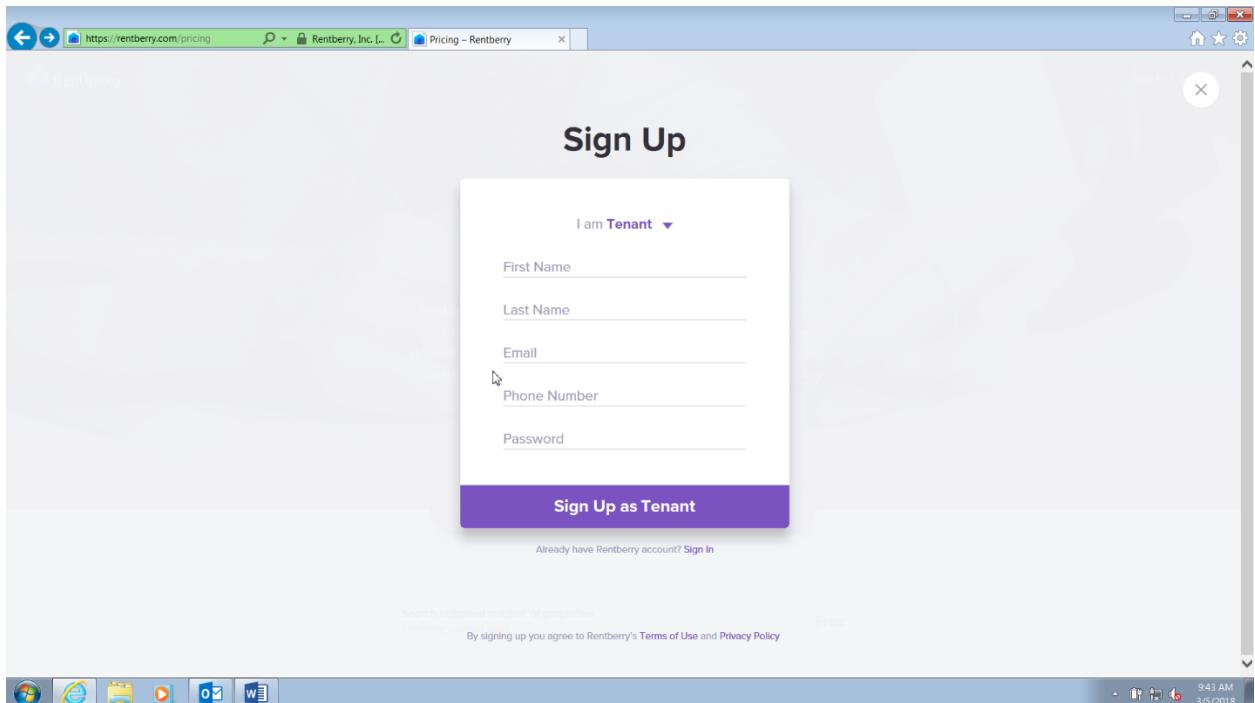
Leave By Dec 13, 2019

*Screenshot of Rentberry listing, 07/03/19*

*Original listing on roomster.com*

Dummy email addresses and profiles were created on rental bidding websites in March 2018.

## 1. Rentberry Registration



Sign Up

I am **Tenant** ▾

First Name \_\_\_\_\_

Last Name \_\_\_\_\_

Email \_\_\_\_\_

Phone Number \_\_\_\_\_

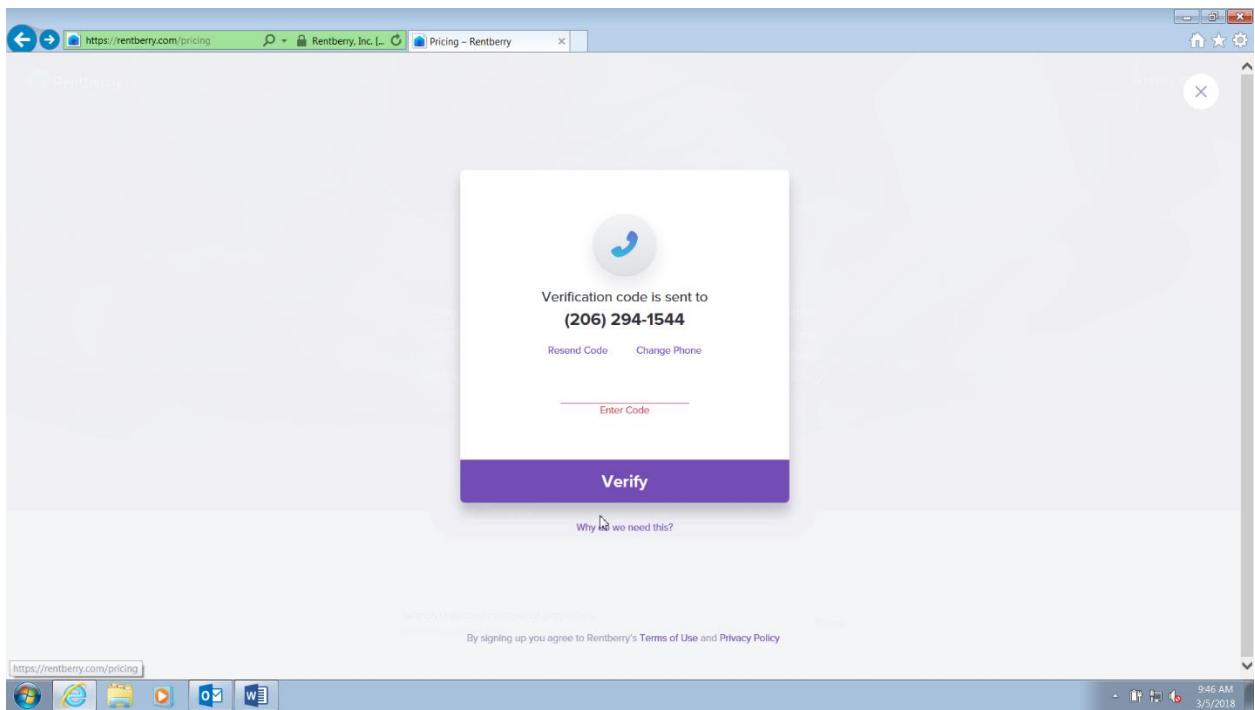
Password \_\_\_\_\_

**Sign Up as Tenant**

Already have Rentberry account? [Sign in](#)

By signing up you agree to Rentberry's [Terms of Use](#) and [Privacy Policy](#)

## 2. Rentberry Phone Number Confirmation



Verification code is sent to  
**(206) 294-1544**

Resend Code Change Phone

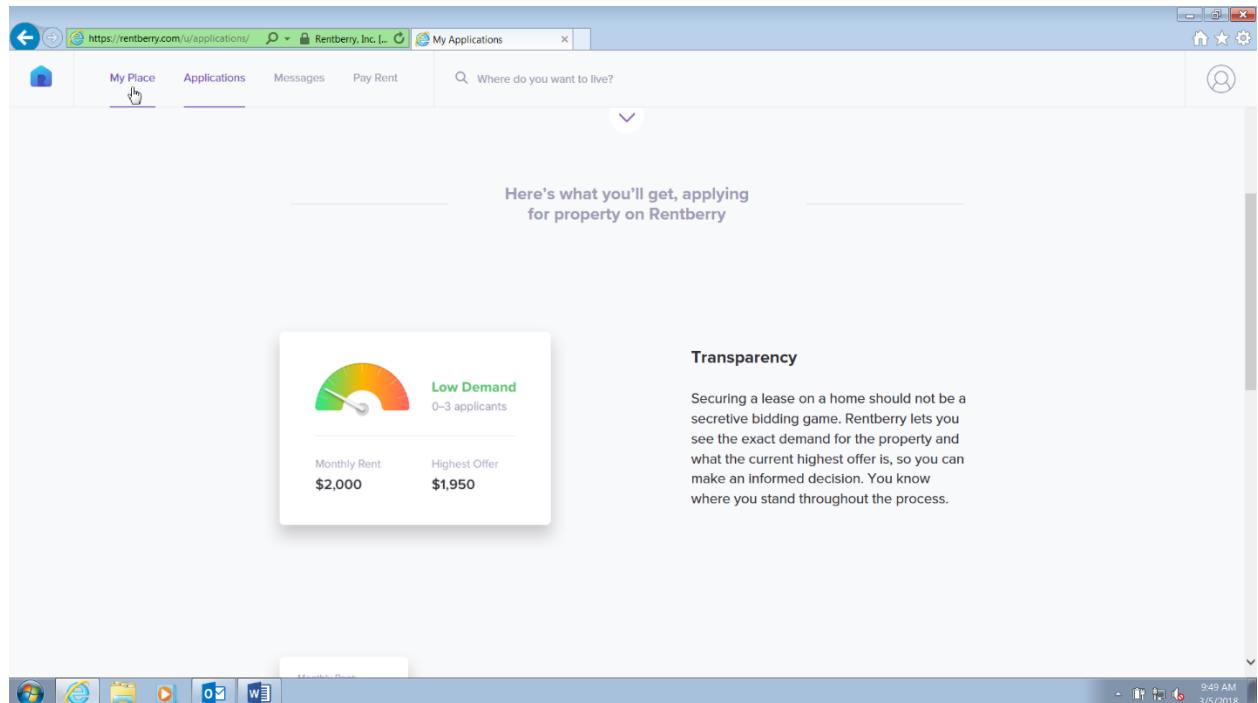
Enter Code

**Verify**

Why do we need this? [Learn more](#)

By signing up you agree to Rentberry's [Terms of Use](#) and [Privacy Policy](#)

### 3. Rentberry Transparency Statement

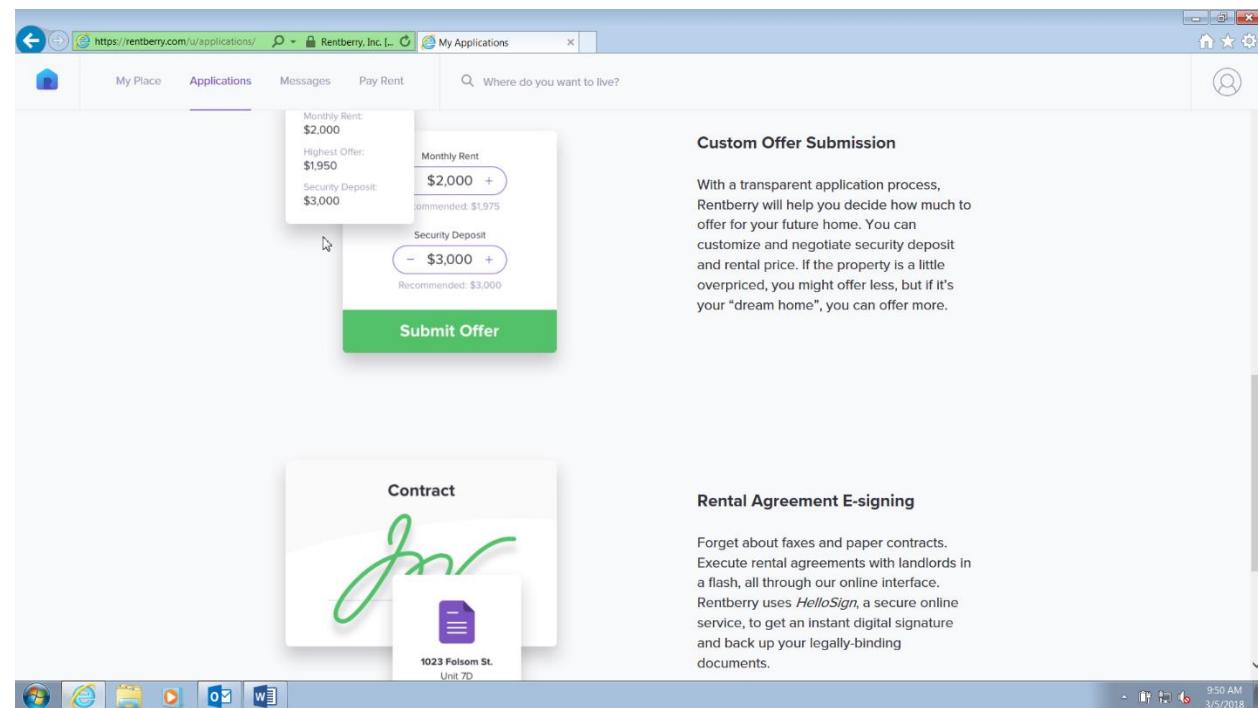


Here's what you'll get, applying for property on Rentberry

**Transparency**

Securing a lease on a home should not be a secretive bidding game. Rentberry lets you see the exact demand for the property and what the current highest offer is, so you can make an informed decision. You know where you stand throughout the process.

### 4. Rentberry Custom Offer Information



**Custom Offer Submission**

With a transparent application process, Rentberry will help you decide how much to offer for your future home. You can customize and negotiate security deposit and rental price. If the property is a little overpriced, you might offer less, but if it's your "dream home", you can offer more.

**Rental Agreement E-signing**

Forget about faxes and paper contracts. Execute rental agreements with landlords in a flash, all through our online interface. Rentberry uses *HelloSign*, a secure online service, to get an instant digital signature and back up your legally-binding documents.

## 5. Rentberry Property Listings in Seattle

The screenshot shows the Rentberry website interface. On the left, there are four property cards with images, prices, and details:

- Single Family, Detached** at \$1,395, 2505 2nd Ave, Seattle, WA. 3 Bed, 3 Bath.
- Rental** at \$4,000, 2505 2nd Ave, Seattle, WA. 2 Bed, 2 Bath, 1,160 Sq Ft.
- Townhouse, Colonial** at \$2,700, 2505 2nd Ave, Seattle, WA. 4 Bed, 4 Bath, 2,536 Sq Ft.
- Cozy Capitol Hill Home** at \$7,500, 423 Federal Ave E, Seattle, WA. 2 Bed, 2.5 Bath, 1,350 Sq Ft.

On the right is a map of Seattle with various neighborhoods labeled: Lower Queen Anne, Belltown, Pioneer Square, First Hill, South Lake Union, Capitol Hill, Cascade, Stevens, Miller Park, Madrona, Central District, Squire Park, Atlantic, Leschi, and Judkins Park. The map also shows major roads like I-5, I-90, and I-94, and landmarks like the Pike Place Market and Seattle Center. A purple circle highlights the location of the first property listed.

## 6. Rentberry Property Description

The screenshot shows the detailed description page for the 3-bed house at 2505 2nd Ave, Seattle, WA.

**Single Family, Detached**  
2505 2nd Ave, Seattle, WA

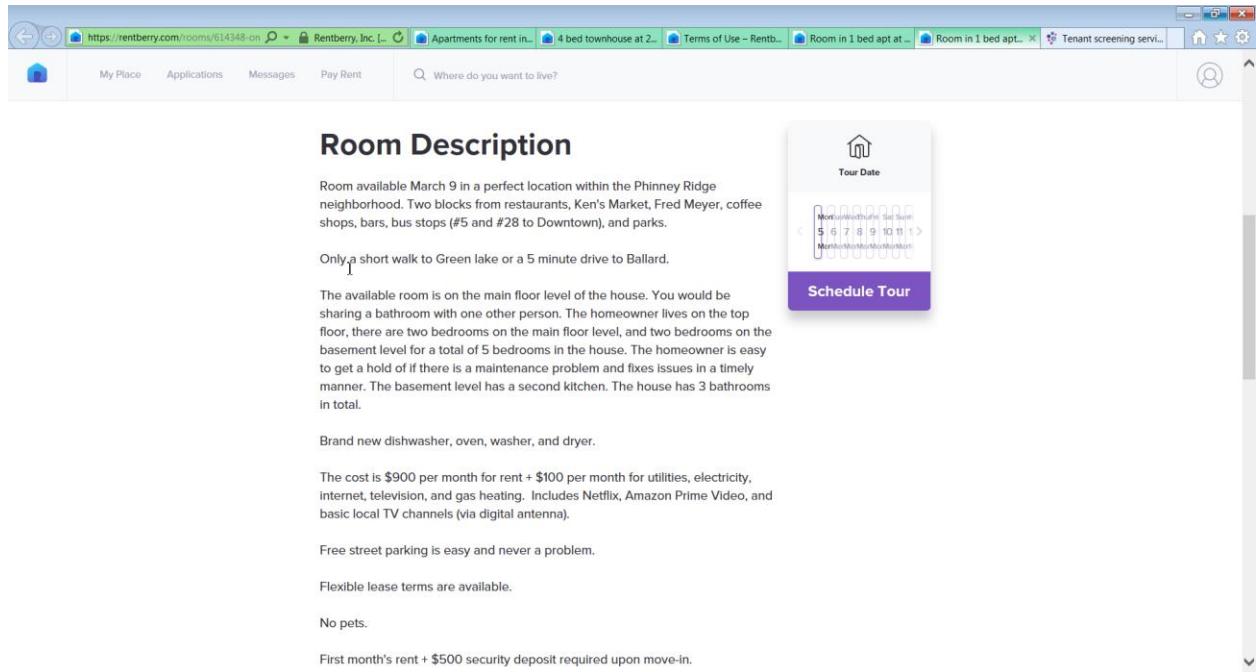
**House Description**  
Ready Sept 01! "Redwood II" floor plan in the new Parkview Community. Hardwood floors throughout the first floor. Kitchen with granite counter top, stainless steel appliances, and a large island. Large walk-in closet in the master bedroom. Master suite with His/Her walk-in closet. Covered front porch. Residents get access to the Fred Smith amenities center which includes gym, pools, & golf simulators. Full description.

**Amenities**

- Pet-friendly
- Hardwood floors
- Air conditioning
- Dishwasher
- Open floor plan
- In-unit laundry
- Walk-in closets
- Indoor/outdoor pools

**Agent**: Carla Sardella  
Description Properties  
509-761-5100  
[www.descriptionproperties.com](http://www.descriptionproperties.com)

## 7. Rentberry Complete Property Description



**Room Description**

Room available March 9 in a perfect location within the Phinney Ridge neighborhood. Two blocks from restaurants, Ken's Market, Fred Meyer, coffee shops, bars, bus stops (#5 and #28 to Downtown), and parks.

Only a short walk to Green lake or a 5 minute drive to Ballard.

The available room is on the main floor level of the house. You would be sharing a bathroom with one other person. The homeowner lives on the top floor, there are two bedrooms on the main floor level, and two bedrooms on the basement level for a total of 5 bedrooms in the house. The homeowner is easy to get a hold of if there is a maintenance problem and fixes issues in a timely manner. The basement level has a second kitchen. The house has 3 bathrooms in total.

Brand new dishwasher, oven, washer, and dryer.

The cost is \$900 per month for rent + \$100 per month for utilities, electricity, internet, television, and gas heating. Includes Netflix, Amazon Prime Video, and basic local TV channels (via digital antenna).

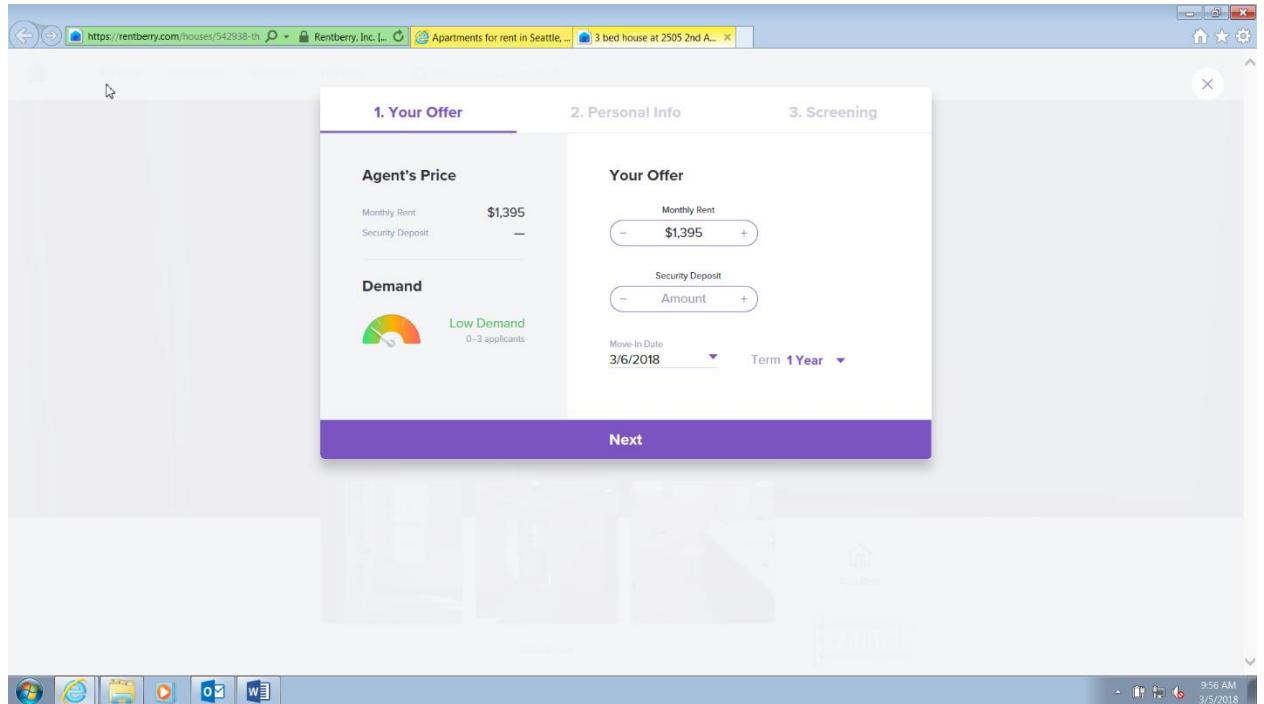
Free street parking is easy and never a problem.

Flexible lease terms are available.

No pets.

First month's rent + \$500 security deposit required upon move-in.

## 8. Rentberry Rental Application Process Step One



**1. Your Offer**

**Agent's Price**

Monthly Rent: \$1,395  
Security Deposit: —

**Demand**

Low Demand  
0-3 applicants

**Your Offer**

Monthly Rent: \$1,395  
Security Deposit: —

Move-In Date: 3/6/2018  
Term: 1 Year

**Next**

## 9. Rentberry Rental Application Process Step Two

Employment

Employed  Student  Unemployed

Employer \_\_\_\_\_ Title \_\_\_\_\_

Monthly Income (Optional) \_\_\_\_\_

Add rental history

I want to add my proof of income

I'm applying with other adults 18 and older

I have pets

I have people that can be used as reference

Next

## 10. Rentberry Rental Application Process Step Three

Application Fee

**\$9.99**

We run Credit Report and Background Check via Experian for all applicants

Credit Report and Background Check  
 Completely safe  
 Best price

YOUR CARD

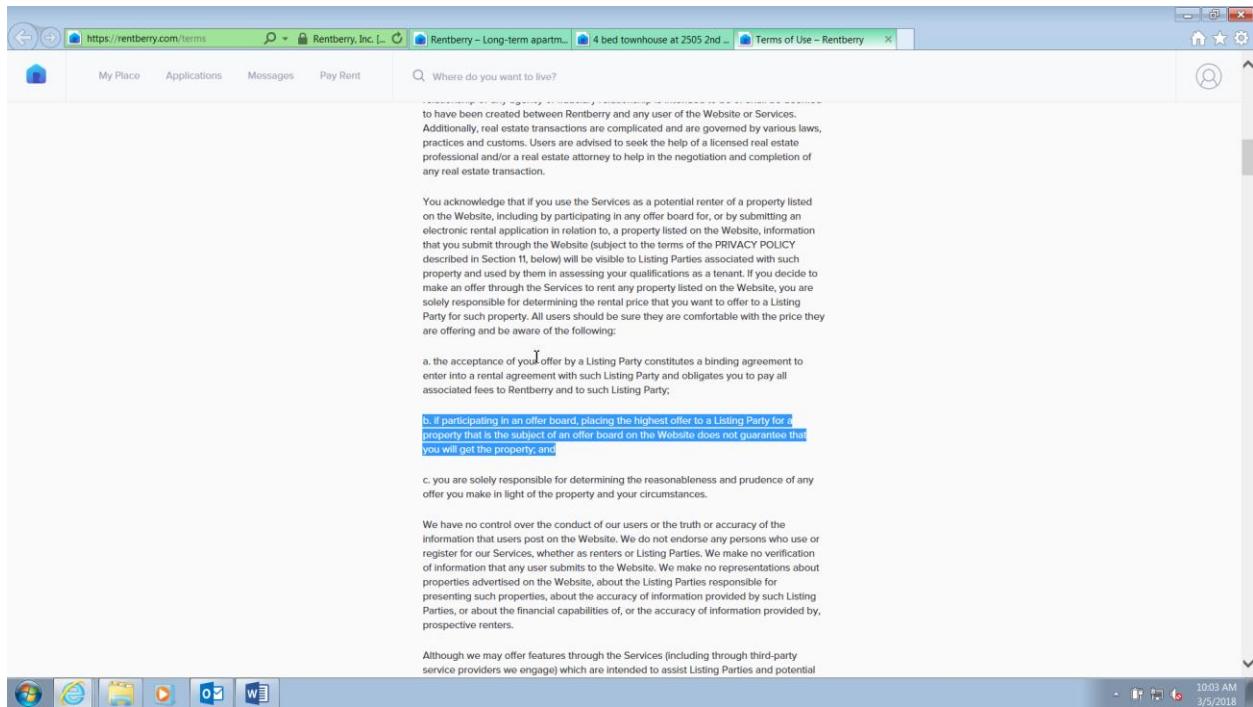
Card Number \_\_\_\_\_

Expiration Date \_\_\_\_\_

You understand that by clicking on the 'Pay Application Fee' button immediately following this notice, you are providing 'written instructions' to Rentberry under the Fair Credit Reporting Act authorizing Rentberry to obtain information from your personal credit profile or other information from Experian.

Pay Application Fee

## 11. Rentberry Terms of Service



to have been created between Rentberry and any user of the Website or Services. Additionally, real estate transactions are complicated and are governed by various laws, practices and customs. Users are advised to seek the help of a licensed real estate professional and/or a real estate attorney to help in the negotiation and completion of any real estate transaction.

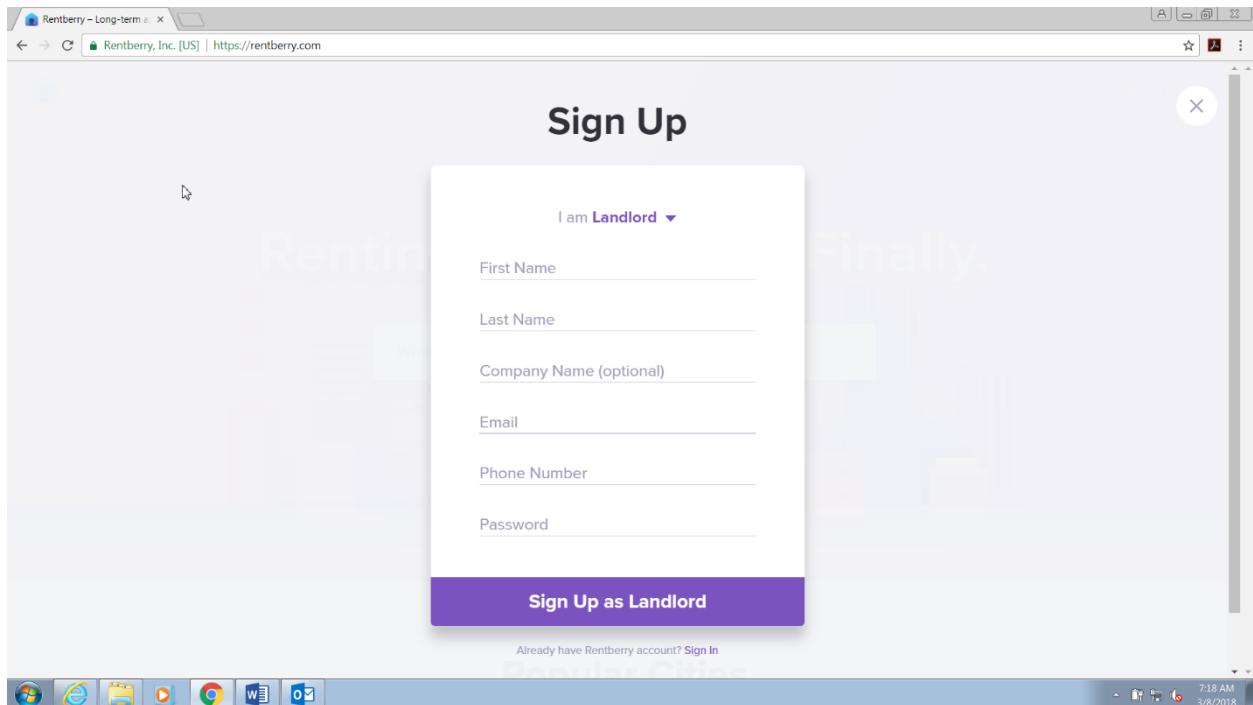
You acknowledge that if you use the Services as a potential renter of a property listed on the Website, including by participating in any offer board for, or by submitting an electronic rental application in relation to, a property listed on the Website, information that you submit through the Website (subject to the terms of the **PRIVACY POLICY** described in Section 11, below) will be visible to Listing Parties associated with such property and used by them in assessing your qualifications as a tenant. If you decide to make an offer through the Services to rent any property listed on the Website, you are solely responsible for determining the rental price that you want to offer to a Listing Party for such property. All users should be sure they are comfortable with the price they are offering and be aware of the following:

- the acceptance of your offer by a Listing Party constitutes a binding agreement to enter into a rental agreement with such Listing Party and obligates you to pay all associated fees to Rentberry and to such Listing Party;
- participating in an offer board, placing the highest offer to a Listing Party for a property that is the subject of an offer board on the Website does not guarantee that you will get the property; and
- you are solely responsible for determining the reasonableness and prudence of any offer you make in light of the property and your circumstances.

We have no control over the conduct of our users or the truth or accuracy of the information that users post on the Website. We do not endorse any persons who use or register for our Services, whether as renters or Listing Parties. We make no verification of information that any user submits to the Website. We make no representations about properties advertised on the Website, about the Listing Parties responsible for presenting such properties, about the accuracy of information provided by such Listing Parties, or about the financial capabilities of, or the accuracy of information provided by, prospective renters.

Although we may offer features through the Services (including through third-party service providers we engage) which are intended to assist Listing Parties and potential

## 12. Rentberry Registration for Landlords



I am **Landlord** ▾

First Name \_\_\_\_\_

Last Name \_\_\_\_\_

Company Name (optional) \_\_\_\_\_

Email \_\_\_\_\_

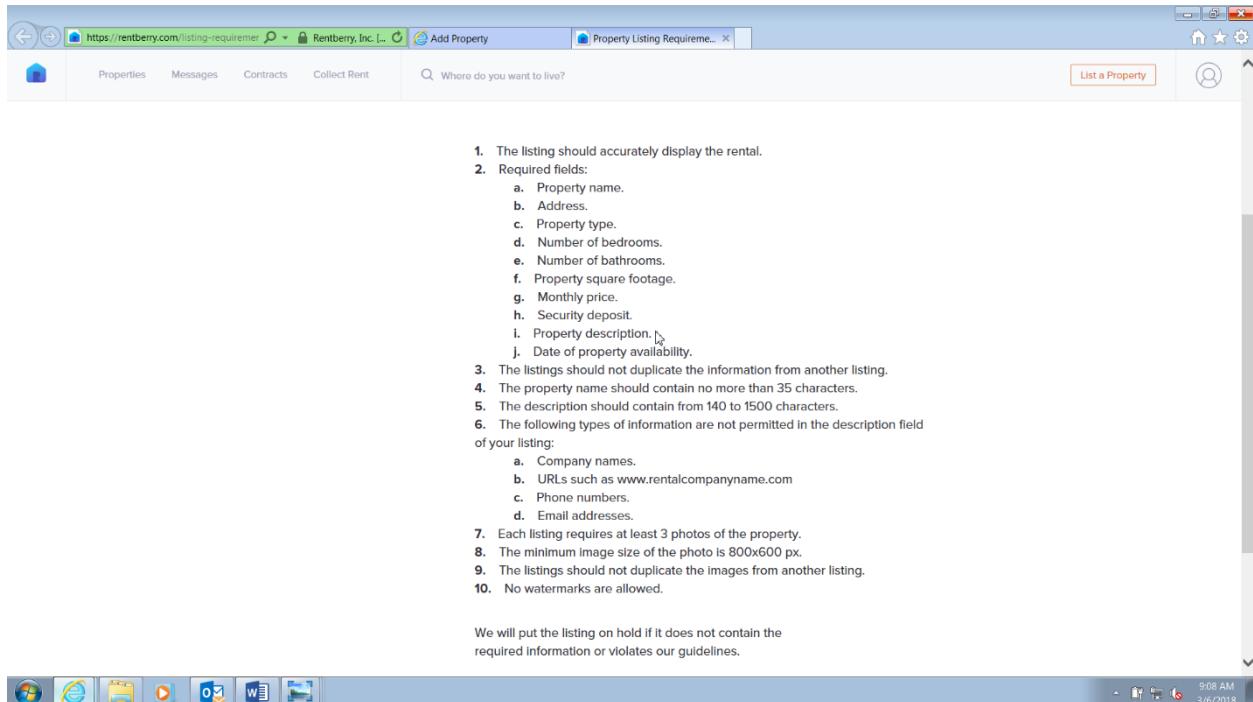
Phone Number \_\_\_\_\_

Password \_\_\_\_\_

**Sign Up as Landlord**

Already have Rentberry account? [Sign In](#)

### 13. Rentberry Rental Landlord Posting Requirements



1. The listing should accurately display the rental.

2. Required fields:

- Property name.
- Address.
- Property type.
- Number of bedrooms.
- Number of bathrooms.
- Property square footage.
- Monthly price.
- Security deposit.
- Property description.
- Date of property availability.

3. The listings should not duplicate the information from another listing.

4. The property name should contain no more than 35 characters.

5. The description should contain from 140 to 1500 characters.

6. The following types of information are not permitted in the description field of your listing:

- Company names.
- URLs such as [www.rentalcompanyname.com](http://www.rentalcompanyname.com)
- Phone numbers.
- Email addresses.

7. Each listing requires at least 3 photos of the property.

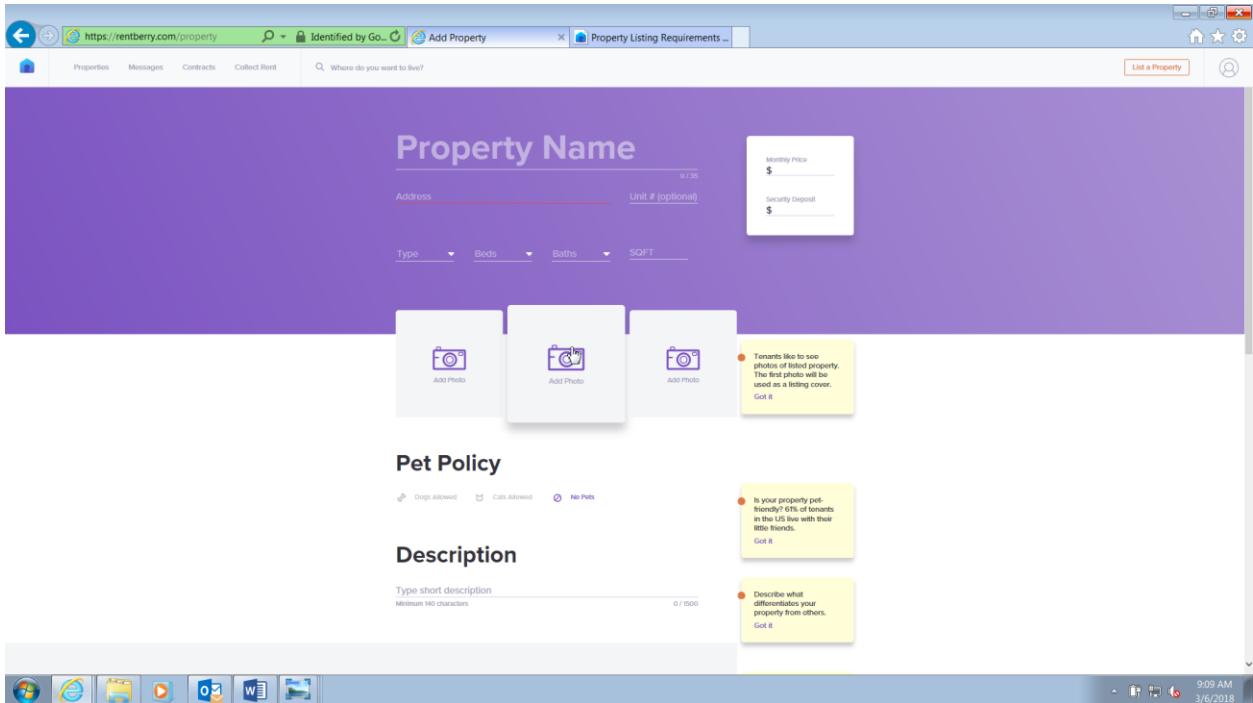
8. The minimum image size of the photo is 800x600 px.

9. The listings should not duplicate the images from another listing.

10. No watermarks are allowed.

We will put the listing on hold if it does not contain the required information or violates our guidelines.

### 14. Rentberry Rental Landlord Property Listing (Top Half)



**Property Name**

Address \_\_\_\_\_ Unit # (optional) \_\_\_\_\_

Type \_\_\_\_\_ Beds \_\_\_\_\_ Baths \_\_\_\_\_ SOFT \_\_\_\_\_

Add Photo Add Photo Add Photo

● Tenants like to see photos of listed property. The first photo will be used as a listing cover.  
Got it

**Pet Policy**

Dogs Allowed Cats Allowed No Pets

● Is your property pet-friendly? 93% of tenants in the US live with their little friends.  
Got it

● Describe what differentiates your property from others.  
Got it

**Description**

Type short description \_\_\_\_\_  
Maximum 150 characters 0 / 1500

## 15. Rentberry Rental Landlord Property Listing (Bottom Half)

The screenshot shows the bottom half of a property listing page on Rentberry.com. At the top, there are tabs for 'Properties', 'Messages', 'Contracts', 'Collect Rent', and a search bar. The main content area is divided into sections:

- Amenities:** A list of checkboxes for various property features like Washer/Dryer in Unit, Pool, Gym, etc.
- Open House:** Fields for Date, Start Time, and End Time, with a link to 'Add another Open House'.
- Available From:** A dropdown menu for selecting a move-in date.
- Save & Post:** A large blue button.
- Information Boxes:** Three yellow callout boxes with tips:
  - Check off amenities that your property has. Tenants like to know what your place offers. Got it!
  - Select dates when you can show your property to tenants. Got it!
  - Specify when your property will be available so tenants can choose proper move-in dates. Got it!

The status bar at the bottom shows the date as 3/6/2018 and the time as 9:11 AM.

## 16. Biddwell Registration Part 1

The screenshot shows the 'User Signup' page for Biddwell.com. The page has a header with the Biddwell logo and a navigation bar with links for 'Home', 'About', 'Contact', 'Log In', and 'Sign Up'.

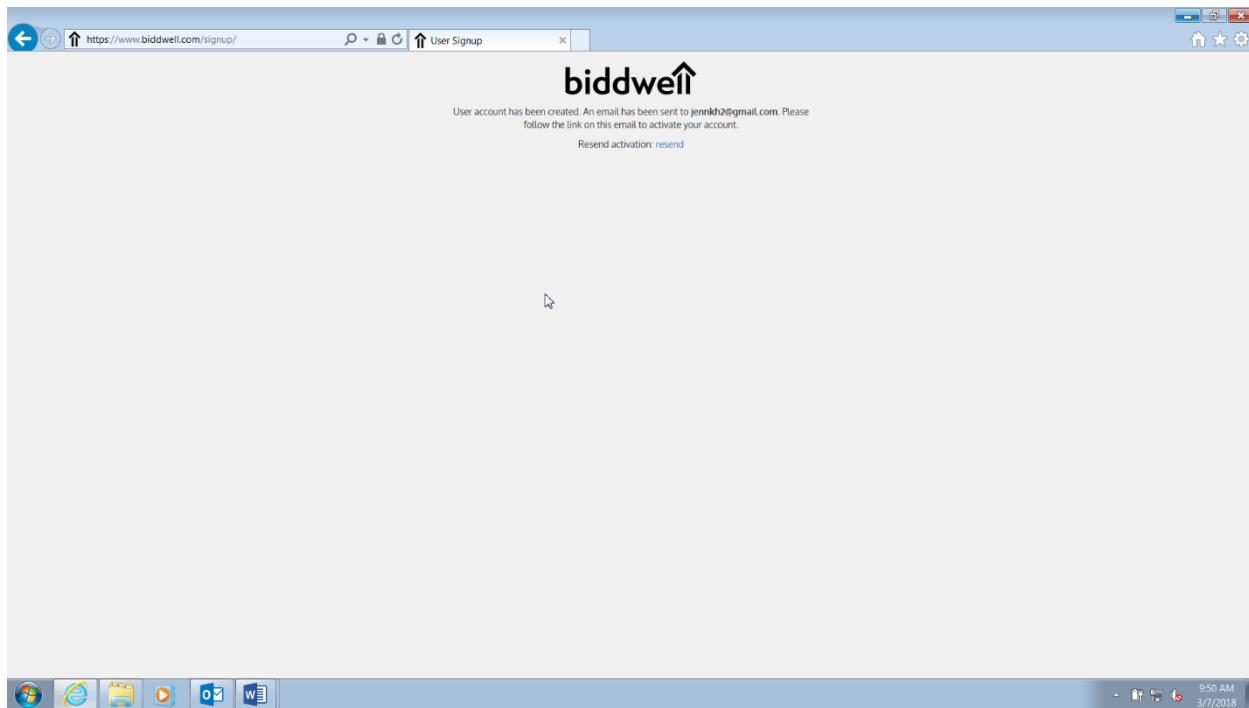
The main form fields include:

- Email:** An input field.
- Password:** An input field.
- Confirm password:** An input field.
- Role:** A dropdown menu set to 'Tenant'.
- Are you looking for a place or listing a space?** A question with a 'Space' radio button.
- How did you find us?** A dropdown menu with options like 'How did you find us?' and 'How did you find us?'. A note below says 'How did you find us?'.
- I Agree:** A checkbox with a note: 'By clicking **Register**, you agree to the Terms and Conditions set out by this site, including our Cookie Use.'

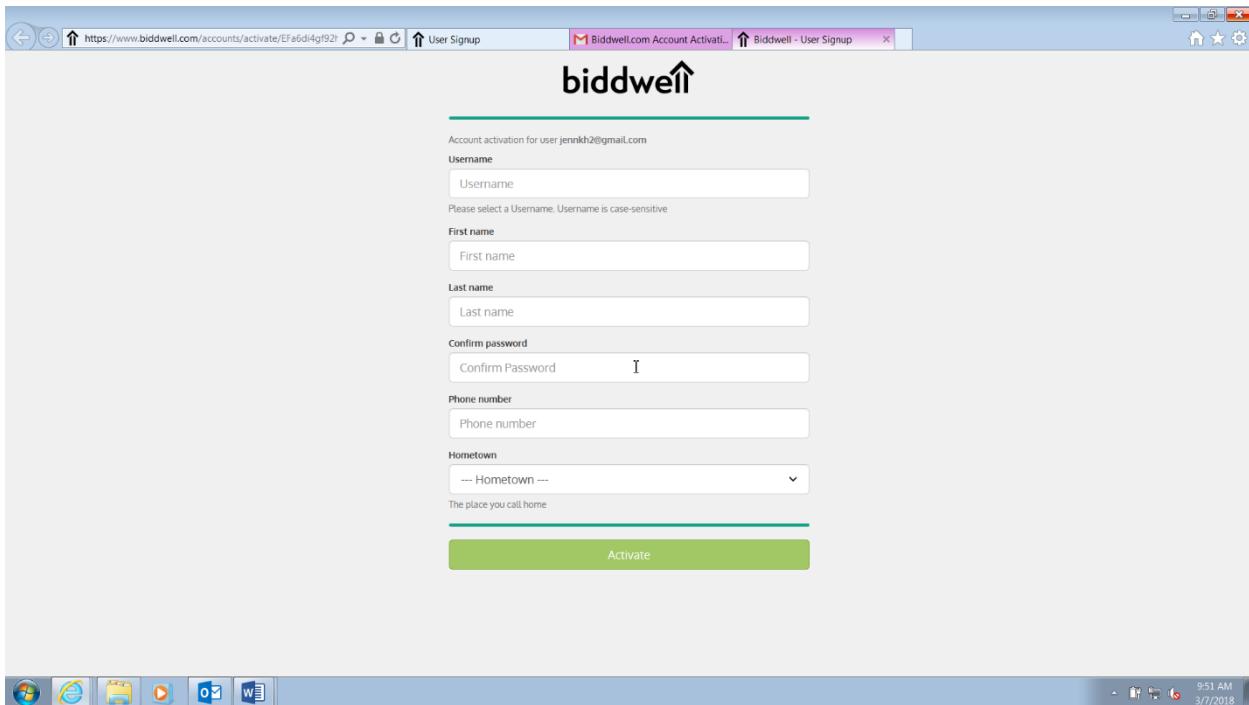
At the bottom are 'Register' and 'Go back to Sign In' buttons.

The status bar at the bottom shows the date as 3/7/2018 and the time as 9:47 AM.

17. Biddwell Registration Confirmation



18. Biddwell Account Activation



## 19. Biddwell Property Search Information

Before we continue, let's figure out what you're looking for and what you can afford so we can best help you find your dream rental home.

Where do you want to live?  
Seattle, WA, United States

How many bedrooms do you need?  
0 to 6+

How many bathrooms?  
1+ 2+ 3+ 4+ 5+

Do you have a pet?  
No Yes

How long do you plan to rent for?  
1 month 12 months 24+ months

When do you plan to move in?  
21-03-2018

10:06 AM 3/7/2018

## 20. Biddwell Budget Information Part 1

DETERMINE YOUR BUDGET

PREFERENCE BUDGET ASSESSMENT

What is your approximate gross annual household income?  
\$30,000 \$200,000+

Why do we need this?  
By providing your income, we can assess your budget and affordability for the given location where you want to live. Our algorithm calculates the median rent in that area and provide you with suggestions on budget based on your preference and what you can afford.

Back Next

10:07 AM 3/7/2018

## 21. Biddwell Posting and Information about Bidding Process

Photos Details Amenities Contact Location

**\$2880 month**

Type: **Sealed Offer**

Score: **95**

Interested in making an offer?

**Building** Available

**Property** Property type: Apartment  
Bedrooms: 2  
Bathrooms: 2

**Amenities**

Furnished	Parking
✓ Kitchen	Walk-in Closets
Walk-in Closets	✓ Swimming Pool
✓ Laundry	✓ Gym
✓ Balcony	Close to school
✓ Elevator	Close to transit
Amenities Room	Fitness Room
Storage Room	Guest Suite
Underground Parking	Swim
Storage Locker	Electricity-included
Backyard	Hoisting-included
Shared Yard	Cable-included
Play Area	Internet-included
Screen Room	Homephone-included
Pet-friendly	Wheelchair-accessible
Close to Park	Garage
Close to Beach	Hardwood
Close to Shopping	Central AC

**Description**

Come for the elegance and stay for the comfort at Domaine Apartments. We pride ourselves on the modern design of our Seattle apartments. Our location, with sweeping views of Lake Union, is unparalleled. But what sets apart the Domaine Apartments in Seattle, WA is our staff. You have a problem. They listen. They care. And, they work quickly.

While staying at the Domaine Apartments in Seattle, WA, you're always in capable hands. So clear your head and focus on what's most in life. Host a BBQ each and cook on the exclusive firepit area. Relax. Our

8:07 AM 3/8/2018

## 22. List of Biddwell Property Listings

Photos Details Amenities Contact Location

**\$2340 /month**

Type: **Sealed Offer**

Score: **95**

New Offer: **\$ 2346**

Make a conditional offer

Send Message

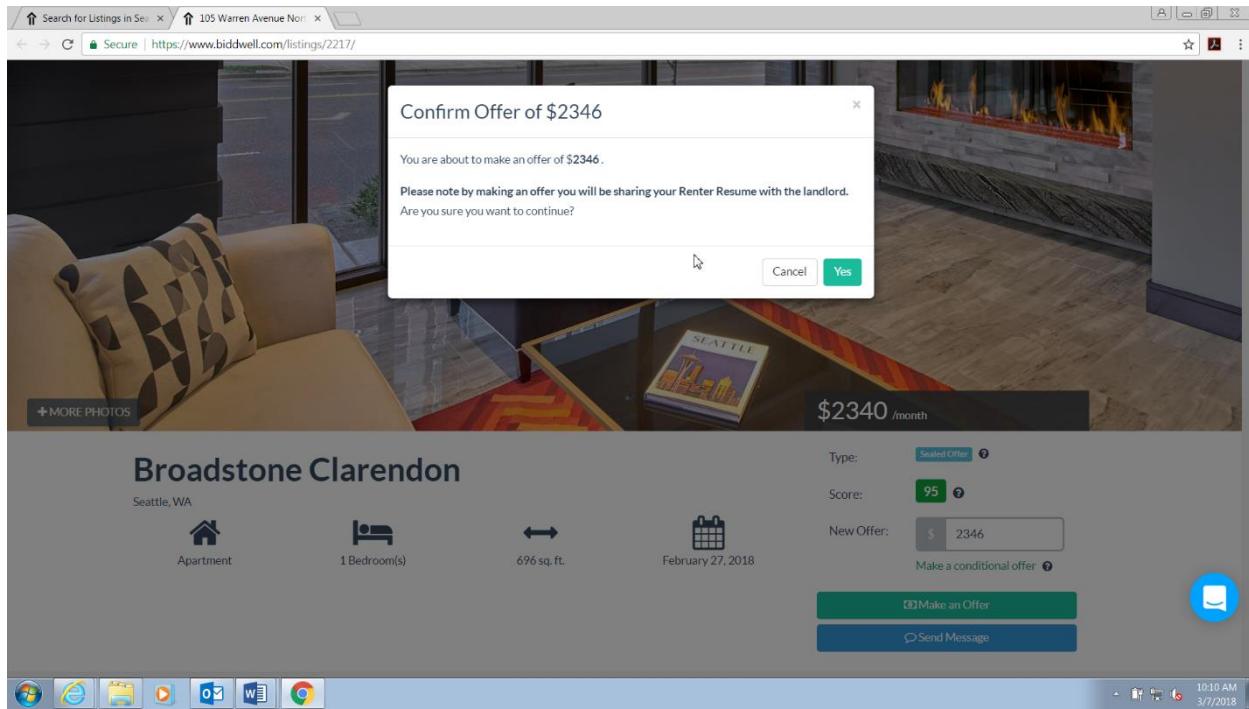
**Broadstone Clarendon**

Seattle, WA

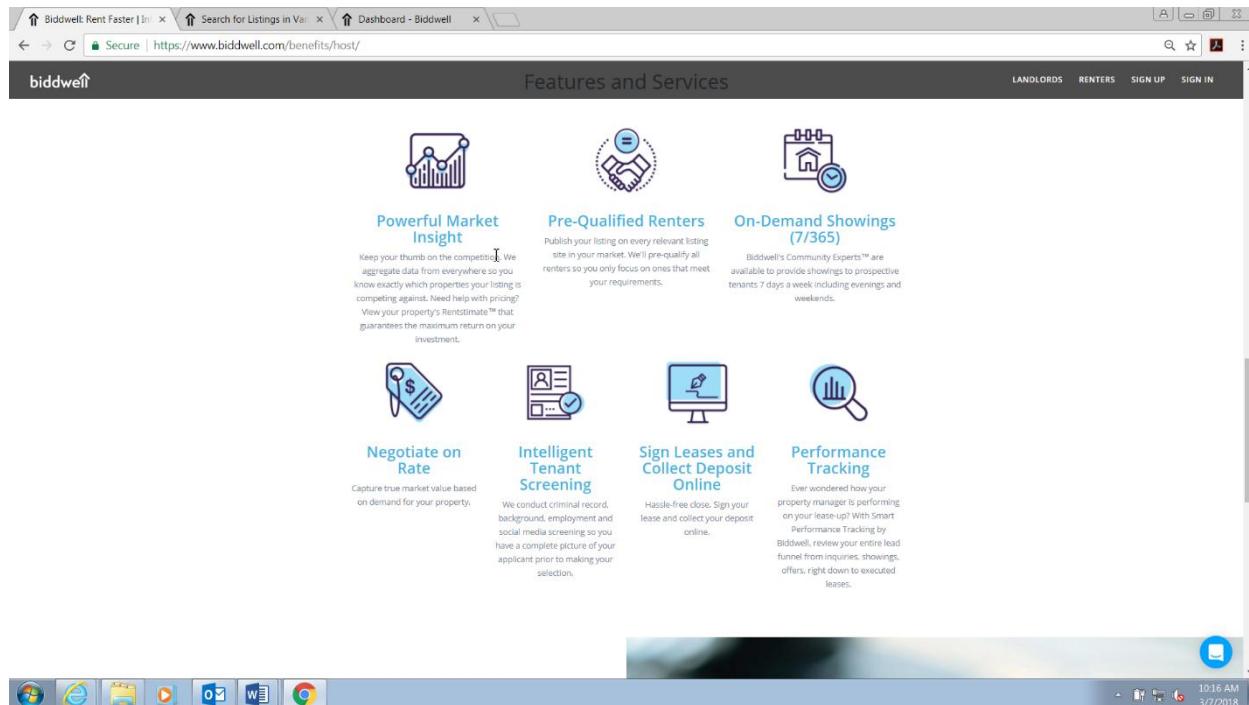
Apartment 1 Bedroom(s) 696 sq. ft. February 27, 2018

10:09 AM 3/7/2018

## 23. Biddwell Place an Offer



## 24. Biddwell Information for Hosts



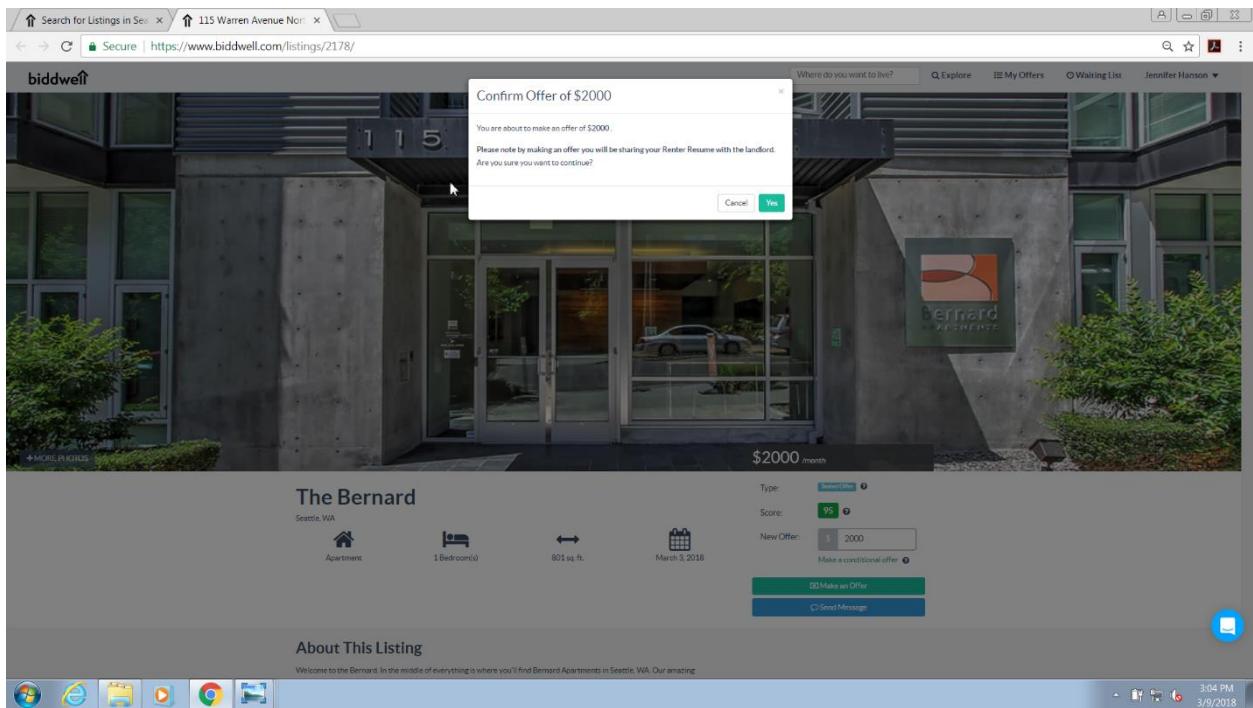
## 25. Biddwell Landlord/Host Dashboard

The screenshot shows the Biddwell Landlord/Host Dashboard. The sidebar on the left is titled 'biddwell' and includes 'Overview', 'Properties' (selected), 'Active' (with 'Data Insight' highlighted in red), 'Inactive', 'Lease Management', and 'Profile'. The main content area has two sections: 'Latest Listing Activity' (no activity) and 'Ending Listing' (no auctions ending soon). A message from Kim from Biddwell is visible in the bottom right corner.

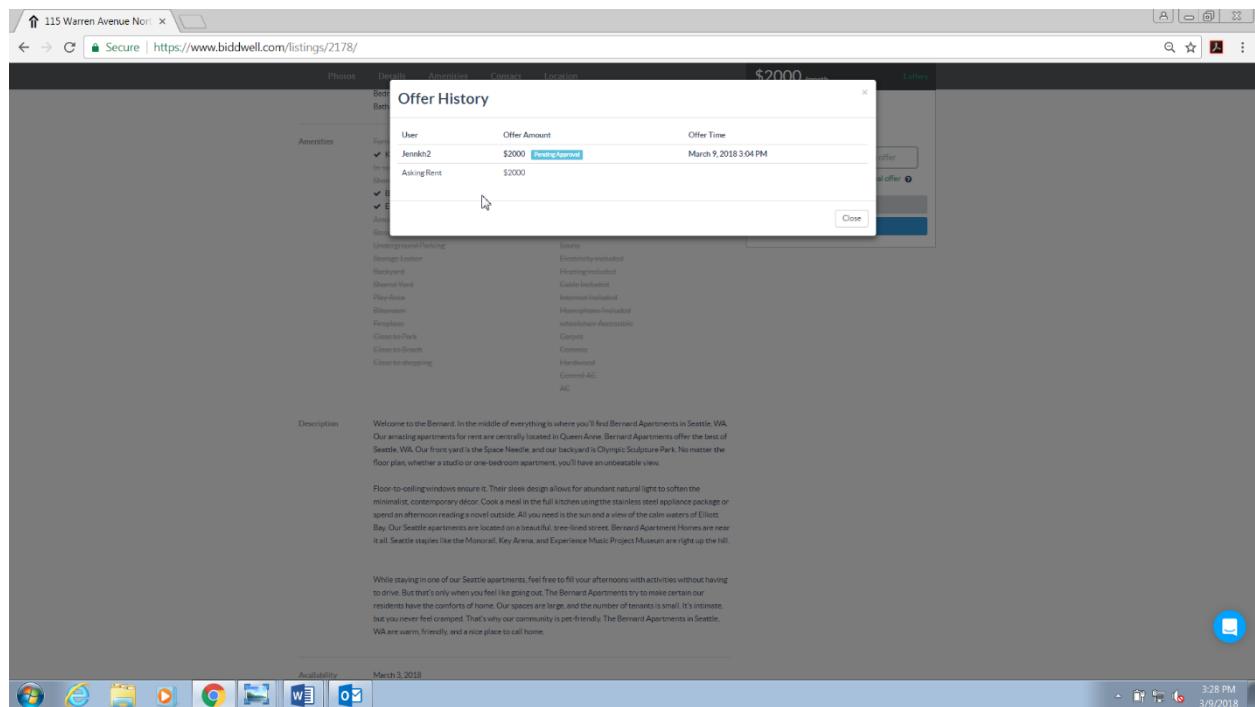
## 26. Biddwell How to List a Property

The screenshot shows the Biddwell 'Properties' creation form. The sidebar on the left is titled 'biddwell' and includes 'Overview', 'Properties' (selected), 'Active', 'Inactive', 'Data Insight' (highlighted in red), 'Lease Management', and 'Profile'. The main form has fields for 'Type' (dropdown), 'Description (short)' and 'Description (full)' (text areas), 'Rooms' (dropdown), 'Bathrooms' (dropdown), 'Size' (text area), 'Country' (dropdown), 'Address' (text area), 'Unit Number, Apt, Suite, Building' (text area), 'Postal Code' (text area), and 'Amenities' (text area). A message from Kim from Biddwell is visible in the bottom right corner.

## 27. Biddwell Offer Submission Process Step 1



## 28. Biddwell Offer Submission Process Step 2



## Exhibit 2

Motion to Supplement Record/ Decl. of Blevins  
Email to Blevins from Franklin re: Rent Bidding Study

Court: Ninth Circuit      Case No. 19-35308

Pacific Legal Foundation  
255 South King Street, Suite 800  
Seattle, WA 98104 - 425.576.0484

## Ethan W. Blevins

---

**From:** Franklin, Erica R <Erica.Franklin@seattle.gov>  
**Sent:** Wednesday, July 24, 2019 5:19 PM  
**To:** Ethan W. Blevins  
**Subject:** FW: Rent Bidding Report  
**Attachments:** Rent Bidding Report.pdf

Ethan,

By way of responding to your recent inquiry about the status and content of the rent-bidding report, I am sending you a copy of the report, which was recently sent from the Office of Housing to Councilmembers Mosqueda, Juarez, Bagshaw, and Herbold. Please see the transmittal email below.

Best,  
Erica

---

**From:** Lundberg, Debi <[Debi.Lundberg@seattle.gov](mailto:Debi.Lundberg@seattle.gov)>  
**Sent:** Thursday, July 11, 2019 3:39 PM  
**To:** Mosqueda, Teresa <[Teresa.Mosqueda@seattle.gov](mailto:Teresa.Mosqueda@seattle.gov)>; Juarez, Debora <[Debora.Juarez@seattle.gov](mailto:Debora.Juarez@seattle.gov)>; Bagshaw, Sally <[Sally.Bagshaw@seattle.gov](mailto:Sally.Bagshaw@seattle.gov)>; Herbold, Lisa <[Lisa.Herbold@seattle.gov](mailto:Lisa.Herbold@seattle.gov)>  
**Cc:** Venkataraman, Asha <[Asha.Venkataraman@seattle.gov](mailto:Asha.Venkataraman@seattle.gov)>; Alvarado, Emily <[Emily.Alvarado@seattle.gov](mailto:Emily.Alvarado@seattle.gov)>; House, Erin <[Erin.House@seattle.gov](mailto:Erin.House@seattle.gov)>; Lin, Edward C <[Edward.Lin@seattle.gov](mailto:Edward.Lin@seattle.gov)>  
**Subject:** Rent Bidding Report

Seattle Ordinance 125551 established a one-year moratorium on rental housing rent bidding platforms and directed the Seattle Office of Housing (OH) to study the potential impacts of rent bidding platforms on Seattle's housing market. Attached please find the Report. Please let us know if you have any questions.

Debi



Debi Lundberg  
Executive Assistant to Steve Walker  
City of Seattle, [Office of Housing](#)  
O: 206.684.0618

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

Rentberry Inc., and Delaney Wysingle,  
Plaintiffs – Appellants,

v.

The City of Seattle,  
Defendant – Appellee.

Case No: 19-35308

**Supplemental Declaration of Delaney Wysingle**

I, Delaney Wysingle, declare as follows:

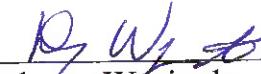
1. I am over 18 years of age and of sound mind. As a landlord in Seattle, I have personal knowledge of the facts stated below.
2. As explained in my previous declaration, ER 41-42, I have rented out a single-family home that I own in Seattle from June 2015 to February 2018. I renovated my rental house from March 2018 through August 4, 2018, during which time the house was vacant. If not for the moratorium, I would have advertised my property and selected my next tenant through a rental bidding platform. Instead, I advertised my property on Zillow.
3. I found a tenant through Zillow who has occupied the property from August 2018 to the present.
4. I renewed the lease in June 2019, attached as Exhibit 1, rather than advertising the property, in part because the moratorium prevents me from using Rentberry to advertise the property.
5. The current lease term on my rental property terminates on June 30, 2020, several weeks before the moratorium's expiration.
6. I continue to want to use Rentberry, including the bidding feature, to advertise my property before the current lease terminates in June 2020.
7. I joined Rentberry in May 2019; however, I still cannot post my property or receive bids because of the moratorium.

8. When I tested whether I could list my property, the Rentberry website reported that “This location is not supported,” as shown in the screenshot attached as Exhibit 2.

9. Alex Lubinsky, CEO of Rentberry, informed my attorneys that this lack of support is caused by the City of Seattle’s rental bidding moratorium.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED this 11 day of August, 2019.

  
\_\_\_\_\_  
Delaney Wysingle

## Exhibit 1

Motion to Supplement Record/Supp. Decl. of Wysingle  
Cloverdale Rental Property Lease Renewal

Court: Ninth Circuit      Case No. 19-35308

Pacific Legal Foundation  
255 South King Street, Suite 800  
Seattle, WA 98104 - 425.576.0484



## LEASE EXTENSION

K [REDACTED] & [REDACTED]				
Resident Name(s) 3808 S Cloverdale ST		Seattle	WA	98118
Address	Unit #	City	State	Zip
		6/1/2019		
Building Name		Date		

It is hereby agreed that the current lease on the above referenced property will be extended for:

a) \_\_\_\_\_ a month-to-month tenancy beginning \_\_\_\_\_; OR  
 b)  a Lease for a term of 12 months beginning July 1, 2019 and ending June 30, 2020  
*If a Lease for a term greater than one year, have all signatures notarized and attach a legal description of the Property.*

**If Paragraph 1b is checked above, Check One of the Following:**

c) \_\_\_\_\_ Upon expiration of the above-stated initial term of Lease, this Agreement shall revert to a month-to-month tenancy on the same terms and conditions as this Agreement except as may be amended by Owner upon thirty days' written notice, OR  
 d)  Upon expiration of the above-stated initial term of Lease, all Resident's rights to occupy the premises shall cease without right to extend the term hereof. This Agreement shall not revert to a month-to-month tenancy following expiration of the term.

The following rates are adjusted at the commencement of the renewed lease term effective \_\_\_\_\_

AMOUNT ADJUSTED		TOTAL MONTHLY AMOUNT DUE
Rental Rate	0	\$2,800.00
Storage – Unit #:		0
Parking – Space #:		0
Other:		0
Other:		
Other:		

*\*For properties in City of Seattle amounts adjusted totaling 10% or more require a 60 day notice of rent increase.*

ADDITIONAL CLAUSES: \_\_\_\_\_

**ACKNOWLEDGMENT**

All other terms and conditions of the current lease and attached addenda remain in full effect throughout the term of this extension.

DATED this 1 day of July, 2019  
 (date) (month) (year)

RHAWA recommends Owner / Agent re-provide any federal, state or city documents previously required at signing of original lease to tenant.

Tenant acknowledges receipt of following forms as checked by Owner / Agent (initial):

Mold Handout (Required as of July 24, 2005)  
 Lead Based Paint Pamphlet (Required for pre-1978 Properties)  
 Lead Based Paint Disclosure Addendum (Required for pre-1978 Properties)  
 Information for Tenants — Seattle Landlord-Tenant Laws (Required / Seattle)

OWNER / AGENT

RESIDENT

RESIDENT

RESIDENT



## LEAD BASED PAINT DISCLOSURE ADDENDUM

(REQUIRED FOR PROPERTIES BUILT BEFORE 1978)

### Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead based paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, owners/agents must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Tenants must also receive a federally approved pamphlet on lead poisoning prevention.

### Owner's Disclosure

(A) The presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) \_\_\_\_\_ Known lead-based paint and/or lead based paint hazards are present in the housing as follows:

---



---



---

(ii)  Owner has no knowledge of lead based paint and/or lead based paint hazards in the housing.

(B) Records and reports available to the owner/agent are (check (i) or (ii) below):

(i) \_\_\_\_\_ Owner has provided the Tenant with all available records and reports pertaining to lead-based paint or lead-based paint hazards in the housing as follows:

---



---



---

(ii)  Owner has no reports or records pertaining to lead-based paint or lead-based paint hazards in the housing.

### Tenant's Acknowledgment (initial both as received)

(i) \_\_\_\_\_ Tenant has received copies of all information listed above.

(ii) \_\_\_\_\_ Tenant has received the pamphlet Protect Your Family from Lead in Your Home.

### Agent's Acknowledgment

(initial) Agent has informed the owner/agent of the owner's/agent's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

### Certificate of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information provided is true and accurate.

DATED this 1 day of June, 20 19.

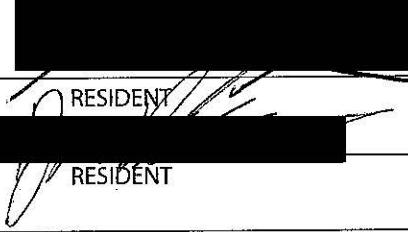
(DATE)

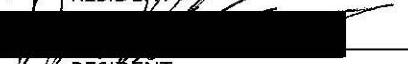
(MONTH)

(YEAR)

  
OWNER / AGENT

  
RESIDENT

  
OWNER / AGENT

  
RESIDENT

  
RESIDENT

COPIES OF THIS NOTICE SHOULD BE KEPT FOR THREE YEARS

## Exhibit 2

Motion to Supplement Record/Supp. Decl. of Wysingle  
Screenshot of Rentberry website as seen by Seattle user

Court: Ninth Circuit      Case No. 19-35308

Pacific Legal Foundation  
255 South King Street, Suite 800  
Seattle, WA 98104 - 425.576.0484

Where do you want to live?

# Cloverdale

10/35

This location is not supported

3803 S Cloverdale St, Seattle, WA 98118, USA

Unit# (optional)

Type \_\_\_\_\_

Beds \_\_\_\_\_

Baths \_\_\_\_\_

SQFT \_\_\_\_\_

Monthly Price  
\$ \_\_\_\_\_

Security Deposit  
\$ \_\_\_\_\_

Add Photo

Add Photo

Add Photo

● Tenants like to see photos of listed property. The first photo will be used as a listing cover.

Got it